In the Supreme Court of the United States.

OCTOBER TERM, 1914.

WRIGHT-BLODGETT COMPANY (Ltd.), appellant, *v.* THE UNITED STATES.	No. 151.
WRIGHT-BLODGETT COMPANY (Ltd.), appellant, *v.* THE UNITED STATES.	No. 152.
WRIGHT-BLODGETT COMPANY (Ltd.), appellant, *v.* THE UNITED STATES.	No. 154.
WRIGHT-BLODGETT COMPANY (Ltd.), appellant, *v.* THE UNITED STATES.	No. 155.
WRIGHT-BLODGETT COMPANY (Ltd.), appellant, *v.* THE UNITED STATES.	No. 156.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MOTION TO CONSOLIDATE.

The Solicitor General moves that the above-entitled cases be consolidated and heard together when the last, No. 156, is reached on the calendar.

75125—15

These are five suits in equity brought by the United States in the Western District of Louisiana to cancel patents issued under the homestead laws. Decrees canceling the patents were rendered by the District Court and separate appeals were taken by the appellant here to the Circuit Court of Appeals for the Fifth Circuit, where the decrees of the lower court were affirmed in one brief opinion, as follows:

> The above entitled and numbered cases are separate appeals from the separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that Wright-Blodgett & Company, vendees of the alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.
>
> The decree in each of the above-mentioned cases is affirmed. (R. in No. 151, p. 176.)

Of the five homestead entries involved four were made in the same township and the other in the adjoining township on the north. The entries were commuted about the same time, and all the lands were conveyed to appellant very soon after the proofs were made. The same testimony of several of the witnesses relates to more than one case and in some instances the testimony of a single witness relates to all of the five cases. The questions involved, therefore, are similar, where they are not identical, and it is believed that the convenience of

both the court and counsel will be served by the consolidation of the causes.

A comparison of the four briefs already filed by appellant's counsel shows that they are substantially identical, a large portion of each being in fact a verbatim copy of the others.

Notice of this motion has been served on counsel for the appellant.

JOHN W. DAVIS,
Solicitor General.

JANUARY, 1915.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 151.

WRIGHT-BLODGETT CO., LTD.,

vs.

UNITED STATES OF AMERICA.

No. 152.

WRIGHT-BLODGETT CO., LTD.,

vs.

UNITED STATES OF AMERICA.

No. 154.

WRIGHT-BLODGETT CO., LTD.,

vs.

UNITED STATES OF AMERICA.

No. 155.

WRIGHT-BLODGETT CO., LTD.,

vs.

UNITED STATES OF AMERICA.

No. 156.

WRIGHT-BLODGETT CO., LTD.,

vs.

UNITED STATES OF AMERICA.

Comes now Wright-Blodgett Co., Ltd., one of the defendants and appellant in the above entitled and numbered causes, and opposes the motion to consolidate same, filed by the United States of America, and for cause of such opposition says:

1. These cases are five separate and distinct suits to annul five separate and distinct land patents, issued at five separate and distinct times, under five separate and distinct circumstances, to five different entrymen. The facts in each case are materially different, and while it is true that certain testimony appears in all five of the cases, it is also true that in each record there is a material amount of testimony which does not appear in any of the other records.

2. Suit No. 151 is a suit by the United States against Joe J. Hicks and the Wright-Blodgett Co., Ltd.; suit No. 152 is a suit against Walter O. Allen and the Wright-Blodgett Co., Ltd.; suit No. 154 is a suit against Samuel Aiken, Jr., and the Wright-Blodgett Co., Ltd.; suit No. 155 is a suit against E. Z. Boyd and the Wright-Blodgett Co., Ltd.; suit No. 156 is a suit against Samuel Bryers and the Wright-Blodgett Co., Ltd.

3. While it is true that in each of these cases the general duties and obligations imposed upon the Government in suits brought to set aside patents issued under section 2301

of the Revised Statutes are at issue, it is also true that appellant relies in the different cases on other and different points of law.

4. If these five cases be all argued together the labor of the court will, we submit, be actually increased instead of diminished, for the reason that instead of having each case separated from the others and its salient features pointed out separately and apart from the others, the court will have the facts in all five cases presented in a confused mass. When the time comes to decide the cases it will be found a matter of extra and unnecessary annoyance to untangle the facts in each separate case.

5. These cases are separate cases. The records are separate records. Individually they may make up one case against the Wright-Blodgett Co.; collectively, each bolstering the other, they may make up another and stronger case against that company. Such a change in position should not be forced upon that company at this stage of the proceedings.

Respectfully submitted,

WRIGHT-BLODGETT CO., LTD.,
By J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHEL,
Solicitors for Appellant.

JANUARY, 1915.

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TABLE OF CASES.

Supreme Court of the United States

OCTOBER TERM, 1914.

No.

WRIGHT-BLODGETT COMPANY, LIMITED,

(Allen Case)

versus

THE UNITED STATES OF AMERICA.

SYLLABUS.

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

   200 U. S., 601, United States v. Clark.
   200 U. S., 321, U. S. v. Detroit Lumber Co.

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

   121 U. S., 325, Maxwell Land Grant Case.
   172 Fed., 950, U.S. v. Barber Lumber Co.
   See other authorities page 17, infra.

3. It will not do for the United States to allege notice in one way and through named individuals, and to attempt to prove notice in another way and through other individuals. Same authorities.

4. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, Maxwell Land Grant Case.
123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.
197 U. S., 200, U. S. v. Stinson.

5. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strange **de facto** presumption arises that the entryman's vendee was likewise deceived.

6. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create

in the casual observer the belief that the law was fully complied with.

121 U. S., 381, Maxwell Land Grant Case, etc.
200 U. S., 601, Clark Case.

7. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R. p. 6.) The homestead entryman, **Walter O. Allen,** is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R. pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt**. The bill then proceeds to charge that the Wright-Blodgett Company Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey. As this allegation will be the subject of discussion we reproduce it from record (page 9) as follows:

> "Your orator further charges and avers that at the time of said sale or pretended sale by the said

defendant, Walter O. Allen, to the said Wright-Blodgett Company, as aforesaid, and prior thereto, and up to and including the dates of making said false and fraudulent proof of the residence upon and the cultivation of said lands by the said defendant and his said witnesses, and of the issuance of said final receipt and said certificate of purchase, and since then, and up to the time of the issuance of said patent, **one James M. Boyd, and one Nat Wasey were**, and each of them was, an agent of the said Wright-Blodgett Company, and entrusted by it in the investigation, solicitation and purchase of lands for its use and benefit; **and that the said Wright-Blodgett Company**, by **and through its said agents, and each of them**, was well advised of, and knew, each and every detail of the acts and things done and committed, as hereinbefore set forth, and described, by the said defendant, Walter O. Allen, and his said witnesses for the unlawful and inequitable purpose of obtaining by such false and fraudulent methods the issuance of said patent; and your orator avers and charges that said Wright-Blodgett Company, **so well knowing and being advised of said false and** fraudulent acts and doings on the part of the said defendant, Walter O. Allen, and his said witnesses, did, through its officers, whose names are to your orator unknown, and therefore not hereby given and set forth, did, assist, advise and encourage the commission of each and every of said acts and things, with the fraudulent purpose of obtaining title to said lands hereinbefore described."

(Black-letters by present writer.)

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value

after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited,** bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation and other proofs of Allen and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 59, where the following agreement of counsel is produced:

> "It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 19, where the following objections of the Wright-Blodgett Company, Limited, appear:

"Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.

"**Wherefore,** it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be striken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be striken out.

"3. There is no allegation in the bills charging invalidity in the entries on the ground that the entryman sold or agreed to sell, prior to making final proofs, hence any attempt to show such a situation would be irrelevant and a variance, and is objected to as such, and motion made to strike same out.

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the

government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

"1. As not the best evidence and hearsay.

"2. As unsworn statments of persons not sworn as witnesses.

"3. As **res inter alios acta**, irrelevant and immaterial."

The recent decisions of this tribunal leave no room or doubt as to the correctness of the appellants' contions that the title of a purchaser in good faith, buying n the faith of a final receipt, is not affected by fraud in he entryman. These decisions are as follows:

200 U. S., 601, United States v. Clark:

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

> "This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a **bona fide** purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was

taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and considering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. **Landes v. Brant, 10 How., 348; Bush v. Cooper, 18 How. 82; Myers v. Croft, 13 Wall., 291; United States v. Detroit Timber and Lumber Co., 200 U. S., 322.** See, further, **Ayer v. Philadelphia and Boston Face Brick Co., 159 Massachusetts, 84.** But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH**

OF THE PATENTS, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

"**WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co., 200 U. S., 321.** The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS**. The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT**. It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

* * * * * * * * *

"* * * There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on

the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS, THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. * * * IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN.** When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in **United States v. Detroit Timber and Lumber Co., supra,** that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF**

DOUBT, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

00 U. S., 321, U. S. v. Detroit Lumber Co.:

he facts in this case are stated in the opinion as ows:

"The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.

"The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

he Court held, page 329, **that the entrymen were in** id. The sole questions then left was the good faith

vel non of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

> "In their brief counsel for the Government say:
>
> "'We claim that the law as laid down in **Hawley v. Dillon**, that one who takes title before the issuance of patent, cannot claim to be a **bona fide** purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'
>
> "We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title.** * * *

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the Government on **Hawley v. Diller, 178 U. S., 476,** which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a **bona fide** purchaser within the meaning of the act. * * *

"* * * It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford, 3 How., 441; Witherspoon v. Duncan, 4 Wall. 210; Simmons v. Wagner, supra; Winona and St. Peter Land Co. v. Minnesota, 159 U. S., 526; Cornelius v Kessel, 128 U. S., 456; Hastings & Dakota R R. Co. v. Whitney, 132 U. S., 357; Benson Mining Co. v. Alta Mining Co., 145 U. S. 428.**

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. **Wisconsin Central R. R. Co. v. Price County, 133 U. S., 496,**

510; **Deseret Salt Co. v. Tarpey, 142 U. S., 241, 251.** * * *

197 U. S., 200, United States v. Stinson:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, **yet the respect due to a patent, the presumption that all preceding steps were observed** before its issue, and **the necessity of the stability of titles** depending on official instruments **demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.**

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and **it is a good defense that the title has passed to a bona fide purchaser for value without notice.** Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. * * *

"**United States v. Burlington & Missouri River R. R. Co., 98 U. S., 334, 342; Colorado Coal Co. v. United States, supra,** p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

" 'But it is not such a fraud as prevents the passing of the legal title by the patents. It fol-

lows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.' United States v. Marshall Mining Co., 129 U. S., 579, 589; United States v. California, Etc., Land Co., 148 U. S., 3, 41; United States v. Winona, Etc., Railroad Co., 165 U. S., 463, 479.''**

RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

> ''The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud.'' ''The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect.** It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.''**

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as com-

plainant in the suit, to prove that the Wright-Blodgett Company, Limited, had actual notice of the alleged fraud in the entryman, and since the bill of complaint specifically charged such actual notice through, and only through J. M. Boyd and Nat Wasey, it was incumbent upon the Government, as complainant, to prove that **KNOWLEDGE THROUGH THE MEN NAMED AND NOT OTHERWISE.** An attempt to show such knowledge through any other person or persons would have been clearly inadmissible under the pleadings, and evidence in support of such an attempt should have been excluded from the record, if properly objected to. That timely and proper objection was made to such evidence has been shown, **supra,** this brief, page 6. The law on the subject is as follows:

121 U. S., 325, Maxwell Land Grant Case:

This was a suit by the United States to annul a grant of land. This Court said:

> "Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved.** In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed."

172 Fed., 950, United States v. Barber Lumber Company:

This was a suit by the United States to annul a patent for alleged fraud. The syllabus reads:

> "In a suit of this character the bill must show specifically and in detail what the fraud consists of and how it was effected, and although the complainant may make out a case which under the circumstances would entitle it to the aid of the Court, yet if it is not the case made out in the bill it cannot recover."

102 U. S., 372, United States v. Atherton:

> "A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.
>
> "A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

Harrison v. Nixon, 9 Peters, 503:

> "Every bill must contain in itself sufficient matters of fact, **per se**, to maintain the case of the plaintiff, so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties, and if the proofs go to matters not with-

in the allegations, the Court cannot judicially act upon them, as the ground for its decision, if the pleadings do not put them in contestation, the 'allegata' and the 'probata' must reciprocally meet and conform to each other."

Boone v. Childs, 10 Peters, 209:

"A party is not allowed to state one case in a bill or answer and make out a different one by proof; the 'allegata' and 'probata' must agree; the latter must support the former."

Byers v. Swiget, 19 Howard, 309:

"It is undoubtedly the rule in equity, as well as at law, that the proofs must correspond with the allegations, and that evidence irrelevant and inapplicable to the latter will be regarded as immaterial."

Rubber Co. v. Goodyear, 9 Wallace, 793:

"The proposition that the patent is fatally defective because it is impossible to make merchantable goods according to the instructions contained in the specifications, cannot be entertained. The answer contains no averment upon the subject. No such issue was tendered to the complainants and they have had no notice that such a defense was intended to be relied upon.

"In equity, the proof and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing as such allegations would be without the proofs requisite to support them."

United States v. Tichenor, 12 Fed., 425:

"In the bill it is alleged that the patent was fraudulently obtained by means of false proofs, but of what the fraud consists, or wherein the proof was false, is not stated. Such an allegation is not sufficient on demurrer. The bill should have gone further and set forth the substance, at least, of the acts constituting the fraud, or stated wherein the proof was false."

Phelps v. Elliott, 35 Fed., 461:

"The rule is fundamental in equity pleading that every fact essential to the complainant's title to maintain the bill and obtain the relief, must be stated in he bill. Otherwise the defect will be fatal. In the language of the Court in **Harrison v. Nixon, 9 Pet., 483, at page 503:** 'Every bill must contain in itself a sufficient matter of fact **per se** to maintain the case of the plaintiff. The proofs must be according to the allegations of the parties, and if the proof go to matter not within the allegations, the Court cannot judicially act upon them as a ground for decision if the pleadings do not put them in contestation.' The 'allegata' and 'probata' must specifically meet and conform to each other, and it can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved * * * a decree must be sustained by the allegations of the parties, as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings."

Platt v. Battier, 34 U. S., (9 Peters) 405:

"Where a bill is filed to compel the conveyance of legal title to certain land, and the statute of

limitations is relied upon by defendant and no disability is alleged by complainant in his bill to take the case out of the statute, the question of disability, not being put in issue by the pleadings, the Court can consider evidence tending to show such disability."

Blandy v. Griffith, Fed. Cases, No. 10,529:

"The rule is well settled in equity that every material fact on either side must be set up in the pleadings, and, that the Court can no more consider what is proved, but not alleged, than what is alleged, but not proved."

Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67:

"A Court of equity will not grant a decree on another ground, where the bill charges actual fraud as the ground for relief, and the fraud is not proven.

Eyre v. Patter, 56 U. S., 42 (15 Howard):

"A bill in equity charging actual fraud is not maintained by evidence of constructive fraud."

98 U. S., 69, United States v. Throckmorton:

This was a bill in chancery brought by the United States Government to set aside a patent for lands. Dealing with the question of notice of an alleged fraud, the Court said:

"The substance of it is that Howard, one of the present defendants, then the law agent of the Government before the board, had from the papers in

some other suit, derived notice of the fraudulent character of the Micheltorena grant, and that he failed and neglected to inform the commissioners of the fact, or otherwise to defend the interest of the United States in the matter. If there had been a further allegation that Howard was then interested in the Richardson claim, or that Richardson had bribed him, or that from any corrupt motive he had betrayed the interest of the Government, the case would have come within the rule which authorizes relief; but nothing of the kind is alleged and the statement is a mere charge of carelessness or negligence on the part of the attorney for the Government, which would not have supported a motion for a new trial in a case of twenty years after it had been rendered.

"Nor is there any such clear statement of the notice which Howard had as is necessary to establish his negligence."

Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to connect either J. M. Boyd or Nat Wasey with the Wright-Blodgett Company's purchase from the entryman, Walter O. Allen, of the land here in dispute. Complainant, however, did attempt, over the objection of the defendant, to show that the Wright-Blodgett Company, Limited, purchased the land, and, therefore, presumably had knowledge of the alleged fraud in the entryman, through one Thomas B. Dickens, a person not referred to in the bill at all. In support of this contention, the entryman, Walter O. Allen, was

placed upon the stand and swore that the purchase of the land by the Wright-Blodgett Company, Limited, from him was negotiated through a Mr. Dickens. (Allen at first designated him as Mr. King, and later, after leaving the stand and conversing with Government witnesses, again took the stand, and, on page 124, corrected his testimony bystating that the man's name was Dickens.)

On page 120 of the record Allen swore as follows:

> Q. Was Mr. King or any other agent of the Wright-Blodgett Company ever out to that homestead entry to make an investigation of it?
> A. Not that I know of.

At record page 160 the following appears in regard to Dickens:

> "It is admitted that both the Government and the defendants in their cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him."

Not once in the whole of his testimony does the entryman, Allen, ever mention the name of Nat Wasey, and only once does he mention the name of J. M. Boyd. On this solitary occasion he states that J. M. Boyd, who is shown at record (p. 97) to have been an United States Commissioner at that time, was the commissioner before whom he made his commutation proof. We think, therefore, that we may safely say that the complainant's testimony, while failing to show that Dickens had knowledge of the alleged failure of the entryman to comply with the Homestead law, does affirmatively show that

neither J. M. Boyd nor Nat Wasey was in any wise connected with the purchase of this land by the Wright-Blodgett Company. From which it naturally follows that the Wright-Blodgett Company, Limited, could not have had knowledge through them of the frauds charged by the bill.

In support of the above statements, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 73-74.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by

J. M. Foster, a witness **for the complainant,** who swears **as follows (Rec., p. 72):**

> Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?
>
> A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.
>
> Q. Who are J. D. Lacey & Company?
>
> A. Real estate man, with an office in New Orleans.
>
> Q. Do they or do they not make a business of making these timber cruises or estimates?
>
> A. It is their principal business, or was, at that time.
>
> Q. How do they stand in the business and how are their estimates considered by timber people?
>
> A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without and further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 73.)

> Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?
>
> A. **That is the usual case, the usual method of doing business.**

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts

of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 82):

> Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?
>
> A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.
>
> Q. (9) Do you make any statement as to the condition of the house?
>
> A. None whatever; I do not.
>
> Q. (10) Do you pay any particular attention to the condition of the house?
>
> A. Not to the house, simply as to how its land is cleared.
>
> Q. (11) You attend to your business and see how much timber there is on the forty?
>
> A. That is my business, regardless of improvements.

Q. That is the custom observed among all timber estimators?

A. Yes.

(Page 83):

Q. (8) In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. **I never did.**

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homesteads would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never

made such an investigation, and at record, page 81, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

Wingate testified (Tr., p. 157):

> Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?
>
> A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.
>
> Q. They did not purchase any lands until Pujo & Moss approved the title?
>
> A. That was my understanding.

Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 81):

> Q. At the time you first went into the office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?
>
> A. Yes, sir; all titles.
>
> Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?
>
> A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 86):

> Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?
>
> A. Yes, sir; my recollection is that the employment began about 1899.
>
> Q. What was the nature of that employment?
>
> A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.
>
> Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office, after the deeds were acquired from the different owners, and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 89):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in somes cases, if not in all, written opinions would be given, and then

after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 89):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 91):

Q. (30) **Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?**

A. **No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.**

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 92 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 93, that his firm had actually passed upon the title here in dispute, and the

written opinion of the firm approving the title is in evidence. (Rec., p. 58.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases,** where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view

solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which report would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 83, Question 8, testified as follows:

> Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?
> A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Allen, the entryman. Thus, the Government's own witnesses show that Walter O. Allen went upon the land and built, or had built upon same, **a good** house; around this house he built **a good fence, a stable, a hog-pen,** and **other out-houses.** He dug **a well,** he **cleared** something over **an acre** of ground, and in his clearing set out fruit trees and planted a crop of peas and corn. The fruit trees were kept free of grass and weeds and the whole establishment looked after generally. The testimony on this subject is as follows:

Allen (page 116):

Q. Explain all the steps taken by you as to improvements?

A. This house was built by Hicks and myself, he giving the contract to Mr. Bass; he built both houses.

Q. Did you cultivate the land in any way, to any extent?

A. Mr. Bass, or Lawrence, did no cultivating.

Q. To what extent was cultivating done?

A. About two acres. * * *

Q. Was any planting done on your side of the line?

A. Yes, sir.

Q. What?

A. Peas, the first crop planted.

Q. Did that crop mature? Was the crop ever gathered?

A. No, sir; nothing but peavines made.

Q. Any trees planted?

A. Fruit trees, some peaches and plum trees.

Q. Were those trees cultivated?

A. I kept the grass away from them and fertilized them.

(Page 113):

Q. You say you and Mr. Hicks had a double house, what is commonly called a double pen?

A. Yes, sir.

Q. Any doors and windows?

A. Doors, but not windows.

Q. Was the enclosure actually fenced in?

A. Yes, sir.

Q. Any outbuildings?

A. A stable.

Q. Did you have any orchard trees?
A. Yes, sir.

(Page 114):

Q. What work did you do there?
A. I planted trees, built fences and outhouses.

With all of these improvements made and kept up on
ıe land, it is quite evident that the ordinary timber
ruiser passing over the land and observing a house, a
ell, a growing crop, growing fruit trees, with the grass
ept away from them, fences, outhouses, etc., would have
othing to put him on notice that the homesteader had
ot fully complied with the law; and this is particularly
ue when we bear in mind the fact that timber cruisers
ay no particular attention to improvements. To this
tuation the following language used by this Court in
ıe **Clark case** is peculiarly appropriate **(200 U. S., 601, . S. v. Clark)**:

> "It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of a timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess. There is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobban."

ALLEN'S ENTRY AND FINAL PROOF WAS IN STRICT ACCORDANCE WITH THE FORMS PRESCRIBED BY LAW AND DECEIVED THE TRAINED GOVERNMENT EXPERTS.

Not only was all of the foregoing true, but the evidence shows that Allen made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Allen, on July 10, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all respects), to issue a patent some nine months later, to-wit: on April 1st, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 25.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

> "The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently

given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to eceive the skilled experts of the United States Land fice, whose **DUTY** it is to investigate and **to hunt for ounds of doubt**, why should the Court infer at it did not equally deceive the Wright-Blodtt Company, Limited, upon whom no such duty as imposed? This record gives no satisfactory nswer to this inquiry. On the contrary, it appears at there was nothing in the way in which the Wright-lodgett Company, Limited, went about making its purhase, and nothing in the way in which Walter O. Allen, he entryman, went about making and commuting his ntry, which could or should, under normal circumstances, ave placed the Wright-Blodgett Company Limited, upon otice of any alleged fraud in the entryman, Walter O.

Allen, and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on July 10, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 65, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On pages 70 and 79 he swore that for several years prior to that time he had an office in Lake Charles. Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 74 he swore:

> Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?
>
> A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any

alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey, the record shows that at the time of the trial of this case he was dead. (Rec., p. 62.) Even should it be held that Wasey was the agent of the Wright-Blodgett Company, Limited,, there is not a single line of testimony anywhere in this record going to show that **Wasey was ever on the land here in controversy,** or had any knowledge of same, or to show that he knew that the Wright-Blodgett Company, Limited, had bought the land, or in fact, to connect him with this transaction in any way. On the other hand the record affirmatively shows that the purchase of this land by the Wright-Blodgett Company, Limited, was effected through another person, and that Wasey **had no connection with the matter.** We make this statement because the evidence shows that the entryman, Walter O. Allen, was a brother-in-law of J. J. Hicks, and that the arrangements looking to the sale of the land by Allen to the Wright-Blodgett Company, Limited, were perfected through J. J. Hicks.

Mr. Hicks, who was placed upon the stand by the Government, testified in regard to the matter as follows (Rec., p. 102):

> Q. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see whether it was probably settled or lived on or the Homestead laws were complied with?

A. I do not.

Q. Do you know Nat Wasey?

A. Yes, sir; I did know him.

Q. How long had you known Wasey at the time you commuted this land?

A. I think I met Mr. Wasey before I was elected clerk of Court, about the time I began to work for Mr. Winfree, in 1899.

Q. Did you ever have any talks with Mr. Wasey regarding this land?

A. No, sir.

* * * * * * * * *

Q. Was Wasey ever at your house?

A. No, sir.

Q. Do you know from his acts or words that he was aware of your living there?

A. I do not.

Moreover, there appears in the record the affirmative testimony of the entryman, Allen, another government witness, who swore, on page 120, as follows:

Q. Was Mr. King or any other agent of the Wright-Blodgett Company Limited, ever out to that homestead to make an investigation of it?

A. Not that I know of.

In view of the foregoing affirmative testimony and of the fact that there is, as noted above, absolutely no showing that Wasey was at any time upon the land, or that he was in any wise connected with the purchase of the land by the Wright-Blodgett Company, we submit that the complainant has failed entirely to make out the allegations of the bill and that the bill should be dismissed.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

121 U. S. 381, Maxwell Land Grant Case:

> "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the

officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistence to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

123 U. S., 307, Colorado Coal & Iron Co. v. United States:

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persos, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the

> Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

133 U. S., 193, U. S. v. Hancock:

The syllabus reads:

> "Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for $1500.00, though it may be the subject of criticism, is not the clear, convincing and unambiguous proof of fraud which is required to set aside a patent of public land."

197 U. S., 200, United States v. Stinson:

The syllabus reads:

> "The Government, like an individual, may maintain any appropriate action to set aside its grants

and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.
when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright-Blodgett Company, Limited.

THE EVIDENCE RELIED ON.

The evidence relied on by the complainant in this case consists of a number of general statements in regard to Nat Wasey's connection with the Wright-Blodgett Com-

pany, Limited, and one or two still more general statements in regard to Wasey's field of operations being in the vicinity of Leesville. There is, as pointed out above, nothing to show that he was ever on this land, and nothing to show, except in the most general way, the location of this land with respect to Leesville. The main evidence upon which complainant appears to rely is the fact that the entryman, Walter O. Allen, received his final receipt on July 8th, 1901, and sold the land on July 10, 1901. This phase of the situation has aready been dealt with by this Court in the **Clark case**, where the Court said:

> "So far as any inference was to be drawn from the nearness of the respective dates of the receiver's receipts, the deeds of the entryman to Cobben and the deeds of Cobben to Clark, it was as open to the officers of the Government as to Clark, if, indeed, he knew anything about those dates; yet they seem to have suspected nothing and he was advised by reputable counsel that the titles were good and bought only on his advice."

Add to this fact that the United States Government, after the purchase was made by the Wright-Blodgett Company, Limited, in July, 1901, and after that company had recorded its deed to the land, proceeded presumably, to make a further investigation as to the validity of the entryman's claim, and thereafter, namely, in the year 1902, proceeded to issue a patent to the land. This would seem conclusively to prove that there was no reasonable ground suggested to the Wright-Blodgett Company, Limited, upon which to predicate a suspicion of any fraud in the entry.

For these reasons we submit that the judgment of the Court of Appeals is erroneous and should be reversed and a decree entered dismissing the bill.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHEL,

Solicitors for Defendants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 152.

WRIGHT-BLODGETT CO., LTD. (ALLEN CASE),
APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

REPLY BRIEF OF APPELLANT.

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHELL,
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vs.

THE UNITED STATES, APPELLEE.

REPLY BRIEF OF APPELLANT.

As nearly as we can gather from the position assumed by the appellee the gravamen of the charge made in this case is that it is in bad company. The contention is that in the Hicks case a showing was made of notice of fraud in the Wright-Blodgett Co., Ltd., and because the Hicks and Allen purchases were handled jointly, therefore, notice in the one case carries notice in the other.

A somewhat similar argument was made in the case of U. S. *vs.* Budd, 144 U. S., 154, and this court devoted the whole of page 164 to a demonstration of its fallacy. It pointed out that if separate bills to set aside separate purchases by the same person were to be filed, and if the cases resulting were to be tried separately *as was done in these*

cases, the defendant might confess judgment in one case without thereby prejudicing its rights in any of the others. Fraud is neither infectious nor contagious. So that even were fraud and knowledge of fraud proven in the Hicks case, which we, of course, deny, that showing could not, we submit, have any effect on the Allen case.

Shorn of the theory of notice by infection, complainant's contention in this case is that Allen contracted to sell his land to the Wright-Blodgett Co., Ltd., before he received his final receipt.

We respectfully submit the following answers to this contention:

First. No such claim was set up in the bill and the attempt to set it up at the trial was cut off by timely objection.

Second. The only witness placed upon the stand to prove such an agreement was J. J. Hicks, who categorically swore that no such agreement existed.

Third. Under the principles announced in the Williamson case, 207 U. S., a "commuter" under U. S. R. S., 2301, would have the right to make such an agreement.

In support of answer *"First,"* we respectfully refer the court to the bill (Transcript, pp. 2 to 11), and especially to paragraph sixth thereof, which plainly shows that the only charge of fraud leveled at this patent consisted in the failure of the entryman to reside upon and improve the land. The defendant's objection to any enlargement of the scope of the bill is to be found at Record, p. 20, and reads:

> "There is no allegation in the bill charging invalidity in the entries on the ground that the entryman sold or agreed to sell prior to making final proofs, hence any attempt to show such a situation, would be irrelevant and a variance and is objected to as such and a motion made to strike same out."

This objection is repeated on page 21 as No. 5 and on pages 99 and 100. See agreement page 59 as to making of objections.

"Second."

In support of answer "second" we point to the testimony of J. J. Hicks who swears as follows, at page 130:

> "53. When Mr. Dickens agreed to advance the money for his commutation, was any understanding entered into as to what disposition would be made of the lands after proof was made?
> "*A. No, sir.*
> "54. No understanding that they would be sold or not?
> "A. He had asked me the question before as to whether or not we intended selling our land and I told him we were.
> "55. Was there any understanding or agreement between you and Dickens or the Wright-Blodgett Co. that after this commutation and issuance of final receipt that the land would be sold to the Wright-Blodgett Co.?
> "*A. No, sir; there was not.*

See on this subject 144 U. S., 144, U. S. *vs.* Budd.

Third.

In support of our answer, "third," we respectfully submit that since the Timber and Stone Act requires the entryman to swear that he intends to appropriate the land to his own exclusive benefit and use, and that no agreement has been made, directly or indirectly, with any person or persons whomsoever by which the title to be acquired from the Government shall inure, in whole or in part, to any person except the applicant. A provision which the subsequent section dealing with final proof omits, and since this court has held in the Williamson case that it could not without ju-

dicial legislation insert such a requirement into the fin
proof provision, and could not in the absence of such a r
quirement hold that the entryman was precluded from co
tracting to sell before making that proof; *therefore*, if th
analogy is to be followed, since section 2290, U. S. R. S
contains such a provision, and section 2301, dealing wit
final proof, not only omits it, but provides that—

> *"Nothing in this chapter shall be so construed as t*
> *prevent* any person who shall hereafter avail him
> self of the benefits of section 2289 from paying th
> minimum price for the quantity of land so entere
> at any time after the expiration of four calenda
> months from the date of such entry, and obtainin
> a patent therefor *upon making proof of settlemen*
> *and of residence and cultivation for such period o*
> *fourteen months,* and the provisions of this sectio
> shall not apply to lands on the ceded portion, etc
> but shall not relieve any settler from any payment
> now required by law."

It cannot be said without materially adding to the statut
that it contains a non-alienation provision. Section 230
U. S. R. S. provides a different method of entering land at
different price under different conditions from the regula
final homestead proof section. It provides specifically jus
what the entryman is to swear to. It does not re
quire him to swear to non-alienation. Does not this mea
that the non-alienation provision is waived?

We are not unmindful of the decision in Bailey *v*
Sanders, 228 U. S., but it seems to us that that case may b
differentiated on the ground that in it a *patent never issued*
The record showed that the land department had a regula
tion which required that the entryman make a showing o
non-alienation and the LAND DEPARTMENT refused to issu
the patent and cancelled the entry because the entryma
did not comply with that regulation. Your honors wer
asked to reverse the Land Department. Here the Lan
Department *issued the patent* and the Attorney General ask
that you reverse the Land Departemnt.

Each of these answers we believe to be conclusive. If so they dispose of this case.

Returning to the original bill which has almost been lost sight of in this excursion far afield, we find it contending that the patent is invalid because the entrymen failed to reside upon, cultivate, and improve the land as required by law, and because the Wright-Blodgett Co., Ltd., had knowledge of said fraudulent conduct of the entryman through Nat Wazey and J. M. Boyd.

J. M. Boyd has been eliminated, as shown in our original brief at page 38, and as no effort has been made by appellee to refute our contentions in regard to him, we think we may consider the point conceded.

Nat Wazey appears from appellee's brief to be equally well disposed of. We have searched that brief in vain in an effort to find reference to evidence tending to show knowledge in Wazey of the *Allen land* and its condition, but have found none. May we not therefore fairly say that the record fails to show any such notice of fraud in the Wright-Blodgett Co. through Wazey.

II.

Burden of Proof.

In this court for the first time the point is made in behalf of the Government that the burden of proof of its good faith and lack of notice is on the defendant. In the courts below it was freely stated that this case is governed by the Clark case, 200 U. S., in which it was held that "actual notice must be proved" by the Government.

That decision is in accord with that principle of law which announces that "good faith" will be presumed and that he who alleges bad faith must prove it. That decision was handed down in a case strikingly similar to the case at bar. One in which a patent under the great seal of the United

States was assailed by the Attorney General. It is a very recent utterance of the court. Our learned opponents contend that it should be overruled on the authority of Boone *vs.* Childes, 10 Peters, 147. This latter case has little or nothing in common with the case at bar. It was not a suit by the Government to set aside a patent, but was a litigation between private individuals to set aside certains transactions by other private individuals. The defendant "Chiles, after the bill was filed, purchased from Green Clay the rights he held and in his answer alleges him to have been a purchaser in good faith."

That is to say, he changed his position after the filing of the bill and acquired Green Clays' rights, and claimed thereunder to be a purchaser in good faith.

The court held the burden was on Chiles to make proof of these allegations of the purchase, etc., made in his answer; that his answer would not prove itself.

We submit that this court will require stronger authority than that cited to overrule the Clark case. The other two cases cited are cases decided in inferior Federal courts, and are probably on their way to this court for revision and correction at present.

Defendant and Appellant's Witnesses.

Some stress has been laid upon the alleged failure of the defendant to produce and swear as witnesses all of its employees. This seems a strange contention.

The record shows that Michael Kelly was a representative of the Wright-Blodgett Co., Ltd., but that he was in Louisiana only *every two or three months* (R., p. 76). His testimony, therefore, could not have been conclusive as to what notice Wazey, or Boyd, had or did not have. No claim was made in the bill that any knowledge of the alleged frauds was acquired through him, and, although he was available as a witness, *no effort was made by the Government to place*

him on the stand. This court held, 144 U. S., 154, U. S. *vs.* Budd, that complainant was entitled to cross-examine a person so situated as a hostile witness, and held that no presumption could arise from his failure to testify. It is true that in that case the defendant's answer was under oath, but in this case the complainant waived the oath. It would, therefore, seem a little late now for the complainant to claim that defendant did not call upon Kelly to testify. If it thought his testimony pertinent, it could without risk have called him itself.

The other persons employed or claimed to have been employed by defendant in Louisiana were:

1. Nat. Wazey, who was dead at the time the suits were brought.

2. T. B. Dickens, who had defaulted and fled, and of whom the record speaks as follows, page 160:

> "It is admitted that both the Government and the defendants in these cases made every effort to secure the presence as a witness of Thomas B. Dickens, but were unable to locate him."

3. Ben Foster, who testified that Wright-Blodgett Co., Ltd., had a general cruise; that it was customary to buy in such a cruise, and that he never made any special investigation to ascertain compliance with the homestead laws during the time that he represented the Wright-Blodgett Co. (p. 83).

4. T. C. Wingate, who testified (p. 157) that the Wright-Blodgett Co. submitted all their titles to their attorneys for approval before final purchase.

5. C. D. Moss, of the firm of Peyo & Moss, who was sworn by defendants and testified that his firm were the attorneys

of the defendant-appellant; that they examined and approved *each of the titles here at issue*, and that they advised their clients that a final receipt was as good as a patent, and that the purchasers were not bound to look for grounds of doubt.

6. J. M. Boyd, whom the record shows not to have been an employee of the Wright-Blodgett Co., but an U. S. Commissioner.

From the foregoing it appears that all those persons, continually on the ground and available, were sworn and testified. They showed the business methods of the defendant: the fact that it purchased 150,000 acres of land in Louisiana, of which the six hundred and odd acres here in controversy constitute less than ½ of 1 per cent; that it was very careful to buy *only after having the titles approved by one of the most prominent and reliable law firms in the State*, and that that firm, in good faith, approved these very titles.

It showed that it was not the custom of timber estimators to make examinations to ascertain whether entrymen complied with the law; that Foster did not do so; that Wingate did not do so, and that Wazey was a timber estimator. Short of producing Dickens and Wazey, which was impossible, we submit that defendant did all that could reasonably have been required of them, and we respectfully submit that it cannot be said of them that they did not furnish evidence to support their plea of good faith. This they did voluntarily, because, as shown *supra*, the burden was on the Government to show bad faith; nor can it be said that they did not purchase in reliance on the receivers' receipt, for the testimony of Moss, pages 86, 89, 91, 93; Wingate, page 157; Foster, page 81, show conclusively that they did rely upon this receipt in making their purchase.

The Detroit Lumber Co. Case.

Nor is the contention that "It is no hardship to exact of a purchaser that he shall have been careful to follow up all clews to wrong-doing that came to his notice before he bought" and made meritorious. This contention is merely a resurrection of the claims of the Government which were laid to rest by this court in the Detroit Lumber case, 200 U. S., where it said:

> "We do not understand the law to be as stated or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that the vendor is a wrongdoer, and that therefore he must make a searching inquiry as to the validity of his claim to the property."

Should the Government Be Allowed to Amend Its Bills?

On the last page of the brief filed in this court by appellee the suggestion is made that in the interest of justice, the bills may be regarded as amended, so as to admit the evidence of the alleged contract to alienate the land before receivers' receipt.

This would, we believe, scarcely be justice to the appellant. In support of the suggestion appellee cites the following case.

192 U. S., 355, U. S. *vs.* California & Oregon Land Co.:

In this case United States sued to forfeit patents for noncompliance by the landowner with his obligations regarding road building. The landowner pleaded that he was in good faith without notice. Court so held: Thereafter United States brought a new suit to set aside the same patents on ground that land was within the Klamath Indian reservation. Court held United States should have set up this in the former suit.

Court *did not hold* that in the former suit, without a allegation in the bill to that effect, United States would ha been entitled to prove that the land was within the Klama Indian reservation.

The distinction is clearly marked. It is almost unive sally held that one sueing to recover real estate must p pound all of the titles upon which one relies. Thus, if A claim land X by deed from B and also by deed from and sue D to recover that land, he is obligated to set for his deeds from both B and C, but if he do not do so in pleadings, preferring to rely on his title from B alone, cannot thereafter, without amending these pleadings, off evidence in support of his title from C. Nor will he be lowed to amend his pleading *unless he do so promptly,* fo suit upon a title from C is a materially different action fr a suit upon a title from B. 12 Howard, 407, Snead McCaul:

The Government is far from acting promptly in seeki here for the first time to amend its bill. The amendm sought would change the issue in the case from failure reside upon and improve to the fraudulent contract to c vey. This is not a case in which the appellee is taken surprise or in which no notice of appellants intent to ject to the variance was given in the lower court. The rec shows (page 99) that when the case was first called for t in 1908 or 1909, the Government attempted to prove fa not alleged in the bill. The evidence was at once objec to as not tending to prove or disprove any fact or allegati put at issue by the pleadings.

This obection was repeated from time to time during t hearing of the case and was incorporated in a motion pp. 17-18) made on December 22, 1909, to strike out of the testimony on the subject as irrelevant, and anot similar motion was made (R., p. 21) on February 25, 19 The case was not finally submitted until May, 1912 p. 213). Thereafter it was heard in the Circuit Court of A

peals and decided in February, 1913. It thus appears that the complainant had 3 or 4 years in which to amend its pleadings in the Circuit Court but made no effort to do so. Thereafter the cause was heard by the Circuit Court of Appeals, but still no effort to amend was made. It is now that such a suggestion is put forward and that suggestion is made in a brief. We submit, that by this long delay, appellee has cut itself off from any claim to consideration by this court and will not be allowed to amend now.

22 Federal, 217 Brewer *vs.* Jacobs:

Certainly it will not be allowed to amend in this court, but the case will be remanded to the lower court to allow the defendant to meet the new issues involved.

129 U. S., 397, Liverpoor Steam Co. *vs.* Phœnix Insurance Co.

142 U. S., 396, Wiggins Ferry *vs.* Ohio & Mississippi Railway.

186 U. S., 377, Warner *vs.* Godfrey.

Moreover, the plea of appellee to be allowed to amend here should be considered in the light of the repeated utterances of this court to the effect that suits to amend patents to public lands should be successful

> "only when the allegations on which the attempt is made *are clearly stated* and fully proved,"

and particularly the ruling of the Atherson case, 102 U. S., 372, which, after stating the distinct particulars which a bill to set aside a judgment on grounds of fraud must contain, says (we quote the syllabus):

> "A bill to set aside or amend a patent of the U. S. for public lands or to correct it on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

See also 172 Fed., 950 U. S. *vs.* Barber Lumber Co.

To allow the Government to allege one set of facts in its bill and to prove another and different set of facts by the simple expedient of amending in the appellate court would amount to holding that the particulars of the fraud claimed need not be alleged at all, since a stereotyped bill might be filed in all cases and amendments made in the appellate court to suit the proof adduced. For these reasons, we submit, that the bill should be dismissed.

All of which is respectfully submitted,

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHELL,
Solicitors for Defendant.

January, 1915:.

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 154

WRIGHT-BLODGETT COMPANY, LIMITED,

(Boyd Case.)

versus

THE UNITED STATES OF AMERICA.

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHELL,
Solicitors for Defendants.

January, 1915.

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Supreme Court of the United States

OCTOBER TERM, 1914.

No. 155.

WRIGHT-BLODGETT COMPANY, LIMITED,

(Boyd Case.)

versus

THE UNITED STATES OF AMERICA.

SYLLABUS.

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

   200 U. S., 601, United States v. Clark.
   200 U. S., 321, U. S. v. Detroit Lumber Co.

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

121 U. S., 325, Maxwell Land Grant Case.
172 Fed., 950, U.S. v. Barber Lumber Co.
174 U. S., 981, Kennedy v. Custer.

See other authorities, **infra, p. 16.**

3. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, Maxwell Land Grant Case.
123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.
197 U. S., 200, U. S. v. Stinson.

4. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.

5. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with.

121 U. S., 381, Maxwell Land Grant Case, etc.
200 U. S., 601, Clark Case.

6. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R., p. 6.) The homestead entryman is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R., pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt.** The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited,** bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation

and other proofs of Boyd and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 88, where the following agreement of counsel is produced:

> "It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 23, where the following objections of the Wright-Blodgett Company, Limited, appear:

> "Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.
>
> "**Wherefore,** it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be striken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be striken out.

"3. **THERE IS NO ALLEGATION IN THE BILLS CHARGING INVALIDITY IN THE ENTRIES ON THE GROUND THAT THE ENTRYMAN SOLD OR AGREED TO SELL, PRIOR TO MAKING FINAL PROOFS, HENCE ANY ATTEMPT TO SHOW SUCH A SITUATION WOULD BE IRRELEVANT AND A VARIANCE, AND IS OBJECTED TO AS SUCH, AND A MOTION MADE TO STRIKE SAME OUT.**

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

"1. As not the best evidence and hearsay.

"2. As unsworn statments of persons not sworn as witnesses.

"3. As **res inter alios acta**, irrelevant and immaterial."

See, also, objections at R., pp. 61, 62, 63, 64.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

200 U. S., 601, United States v. Clark:

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

> "This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a **bona fide** purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and con-

sidering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. **Landes v. Brant, 10 How., 348; Bush v. Cooper, 18 How. 82; Myers v. Croft, 13 Wall., 291; United States v. Detroit Timber and Lumber Co., 200 U. S., 322.** See, further, **Ayer v. Philadelphia and Boston Face Brick Co., 159 Massachusetts, 84.** But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS,** he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

"**WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT**, although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co., 200 U. S., 321.** The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

* * * * * * * * *

"* * * There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS,**

THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. * * * IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in **United States v. Detroit Timber and Lumber Co., supra,** that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT,** and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

200 U. S., 321, U. S. v. Detroit Lumber Co.:

The facts in this case are stated in the opinion as follows:

> "The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.
>
> "The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

The Court held, page 329, **that the entrymen were in fraud.** The sole questions then left was the good faith **vel non** of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

> "In their brief counsel for the Government say:
>
> " 'We claim that the law as laid down in **Haw-**

ley v. Dillon, that one who takes title before the issuance of patent, cannot claim to be a bona fide purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'

"We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title.** * * *

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the

Government on **Hawley v. Diller, 178 U. S., 476,** which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a **bona fide** purchaser within the meaning of the act. * * *

"* * * It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford, 3 How., 441; Witherspoon v. Duncan, 4 Wall. 210; Simmons v. Wagner, supra; Winona and St. Peter Land Co. v. Minnesota, 159 U. S., 526; Cornelius v Kessel, 128 U. S., 456; Hastings & Dakota R R. Co. v. Whitney, 132 U. S., 357; Benson Mining Co. v. Alta Mining Co., 145 U. S. 428.**

"**Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. Wisconsin Central R. R. Co. v. Price County, 133 U. S., 496, 510; Deseret Salt Co. v. Tarpey, 142 U. S., 241, 251.** * * *

197 U. S., 200, United States v. Stinson:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been

defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, **yet the respect due to a patent, the presumption that all preceding steps were observed** before its issue, and **the necessity of the stability of titles** depending on official instruments **demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.**

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and **it is a good defense that the title has passed to a bona fide purchaser for value without notice.** Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. * * *

"**United States v. Burlington & Missouri River R. R. Co., 98 U. S., 334, 342; Colorado Coal Co. v. United States, supra,** p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

" 'But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.' United States v. Marshall Mining Co., 129 U. S., 579, 589; United States v. California, Etc., Land Co., 148 U. S., 3, 41; United States v. Winona, Etc., Railroad Co., 165 U. S., 463, 479.**"

RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

> "The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud." "The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect.** It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**"

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as complainant in the suit to prove that fraud which was alleged in the bill and that notice of fraud which was alleged in the bill—namely, notice through Nat Wasey and James M. Boyd.

In support of these contentions we wish to direct the Court's attention to the following authorities:

121 U. S., 325, Maxwell Land Grant Case:
172 Fed., 950, United States v. Barber Lumber Company.
102 U. S., 372, United States v. Atherton.
Harrison v. Nixon, 9 Peters, 503.
Boone v. Childs, 10 Peters, 209.
Byers v. Swiget, 19 Howard, 309.
Rubber Co. v. Goodyear, 9 Wallace, 793.
United States v. Tichenor, 12 Fed., 425.
Phelps v. Elliott, 35 Fed., 461.
Platt v. Battier, 34 U. S. (9 Peters), 405.
Blandy v. Griffith, Fed. Cases, No. 10,529.
Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67.
Eyre v. Patter, 56 U. S., 42 (15 Howard).
98 U. S., 69 United States v. Throckmorton.

Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to show that either J. M. Boyd or Nat Wasey was ever on the land in dispute, or knew whether the entryman had complied with the law. Of this more infra.

Moreover, we believe that the Government failed to show any fraud in the entryman. The entry was made under the provisions of Sections 2289-2290 of the United States Revised Statutes, which sections read as follows:

> "Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has

filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter a quarter section, or a less quantity of unappropriated public lands, to be located in a body, in conformity to the legal subdivisions of the public land; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law, and every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land already so owned and occupied, exceed in the aggregate one hundred and sixty acres."

Section 2290, U. S. R. S.:

"That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer, and file in the proper land office, an affidavit that he or she is the head of a family, or is over twenty-one years of age; and that such application is honestly and in good faith made, for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation, necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any persons, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter same for the purpose of specula-

tion, but in good faith, to obtain a home for himself or herself, and that he or she has not, directly or indirectly, made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part to the benefit of any person except himself or herself, and upon filing such affidavit with the register or receiver, on payment of $5.00, when the entry is not more than eighty acres, and upon payment of $10.00 when the entry is for more than 80 acres, he or she shall thereupon be permitted to enter the amount of land specified."

What Boyd did is thus told by him when as a witness he took the stand and testified on behalf of the Government (Rec., p. 168):

Q. After making this entry did you put any improvements on the land?

A. Yes, sir.

Q. Of what did those improvements consist?

A. **Dwelling house, front porch and side gallery.**

Q. How much did it cost you?

A. I couldn't tell you. I cut the lumber myself and hauled it and built it with two other men.

Q. About what did it cost you?

A. Somewhere about $20 or $25.

Q. Did you put up any other buildings?

A. No, sir.

Q. During the life of your entry did you clear and cultivate any land?

A. I did.

Q. How much?

A. Something over one acre fenced. I cultivated that acre.

Q. What did you plant on that acre?

A. Peas and sweet potatoes. Raised a crop of peas and planted sweet potatoes.

Q. Did you ever gather any sweet potatoes?

A. I did not. I cultivated some peas and harvested them. The potatoes I turned hogs on them.

Q. Did you ever commute your entry?

A. I did.

Q. How long after you made your entry?

A. I could not tell exactly; my papers showed about 14 months.

Q. Between the time you made your entry and the time you commuted it how often did you visit this land?

A. I could not say how often. Frequently. Once every 3 months anyway.

Q. You are prepared to swear under oath that you visited this land once every three months?

A. Me and my witnesses.

Q. How long did you stay on these visits?

A. I made a practice of staying about three days.

Q. Do you keep any furniture in this place?

A. Kept a place for sleeping purposes.

Q. What do you mean by a "place"?

A. Cots. A place for rest.

Q. Did you keep them there or take them with you?

A. Sometimes I left them there; while I was at work on the crop I would leave our cots there. But after the crop season was over we might have taken them home.

Q. Any other furniture there; bureau or stoves?

A. Nothing but plow tools, harness, etc., to cultivate the land.

Q. Where was your actual residence during this time?

A. I was living at my father's.

Q. This was about three miles from your homestead entry?

A. Yes, sir.

Q. When you would go out on these quarterly trips to visit your entry would you spend the three days you stayed there in cultivating and working on the place, or some other way?

A. I spent what time it would take to cultivate the stuff that it needed.

Q. What else did you do?

A. Hunted, and passed off the time the best way we could. That was our place of staying for the three days there.

Q. What did you do most; hunt or cultivate?

A. I suppose that most of it was really hunting.

Q. Isn't it a fact that you took advantage of these trips simply to go out and have a good time with your friends?

A. No, sir; my intention was to prove up the homestead according to law.

Q. You were, then, combining business with pleasure in doing the hunting?

A. Not particularly. It was the business called me there. I spent the rest of the time I was not engaged otherwise in hunting.

(P. 171) Cross-examination:

Q. At the time you made your entry you intended in good faith to go on this land and make it your residence and make a homestead?

A. I certainly did.

Q. You thought all the time you were complying fully with the law?

A. I certainy did, and a little more than was necessary.

Q. You went there and tended regularly to the crop while it was growing?

A. I certainly did.

Q. You did everything necessary to bring that crop to maturity?

A. I did; and furthermore I planted an orchard.

Q. You fenced your land up?

A. I certainly did.

Q. What did you do with your improvements after selling the land to the Wright-Blodgett Company?

A. I sold them.

Q. How much did you get for them?

A. I disremember what I got. I sold to M. P. Carruth. He had a homestead in Section 10, I think.

Q. You kept your house in good repair and cleaned up during the life of your entry?

A. I certainly did.

Q. Every time you left your homestead with the intention of coming back to further raise your crop and attend to it?

A. Yes, sir.

(P. 174) Recross-examination:

Q. As a matter of fact, you did acquire another homestead some little time after you gave up this one, did you not?

A. Certainly.

Q. You have a home of your own now and are

living on it, and you acquired it some little time after giving up the first one, and it is a separate home from your father's home, is it not?

A. It is.

Q. Perhaps you used some of the money gained by the selling of your first homestead to buy the second one?

A. I used the same money to commute it with.

This, as it appears to us, constituted compliance with the law. Boyd was in good faith seeking to acquire a homestead. He at no time allowed six months to elapse without staying and residing upon his entry. He made the entry "with the idea of having a home there" for himself. He considered it his home. He erected a house upon the premises, slept upon them from time to time, and worked upon them continuously, as is shown in the foregoing testimony. It is true that he worked at his mill at Cora, but he did this because the land he entered was poor and because milling was his trade. Surely the Homestead Law does not contemplate that an entrymans trade should be abandoned.

The homestead law, as we read it, contemplates that the entryman may go away from his land and work out for himself or other people. Its only prohibition is aganst an abandonment exceeding six months in duration at any one time. No such abandonment can be attributed to Boyd.

The Court should bear in mind that Boyd was a Government witness, and was, therefore, testifying as favorably for complainant as the facts would allow.

Before proceeding further, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec. pp. 103-104.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant,** who swears as follows (Rec., p. 102):

> Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?
>
> A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate man, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 103.)

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. **That is the usual case, the usual method of doing business.**

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 111):

> Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?
>
> A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.
>
> Q. (9) Do you make any statement as to the condition of the house?
>
> A. None whatever; I do not.
>
> Q. (10) Do you pay any particular attention to the condition of the house?
>
> A. Not to the house, simply as to how its land is cleared.
>
> Q. (11) You attend to your business and see how much timber there is on the forty?
>
> A. That is my business, regardless of improvements.
>
> Q. That is the custom observed among all timber estimators?
>
> A. Yes.

(Page 113):

> Q. (8) In going upon these lands, would you make any investigation for the purpose of ascer-

taining whether the entryman had complied with the laws so as to entitle them to a final receipt?

A. **I never did.**

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the **final receipt**, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, **followed that custom**, for Foster tells us that he never made such an investigation, and at record, page 95, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was and for a long time had been employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom

to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

Wingate testified (Tr., p. 165):

> Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?
>
> A. Yes, sir; that were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.
>
> Q. They did not purchase any lands until Pujo & Moss approved the title?
>
> A. That was my understanding.

Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 111):

> Q. At the time you first went into the office, however, the custom was to submit all titles,

whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 116):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts

of title to be brought back to the office, after the deeds were acquired from the different owners, and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 118):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in somes cases, if not in all, written opinions would be given, and then after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions

from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 119):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the land had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 121):

Q. (30) Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?

A. No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.

(Page 123):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the

attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 122 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 125, that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 52.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by

J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases,** where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which re-

port would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster**, page 113, Question 8, testified as follows:

> **Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?**
> **A. I never did.**

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Boyd, the entryman. Thus, the Government's own witnesses show that Boyd went upon the land and built upon same a good house with a front porch and a side gallery around this house; he built a fence and he cultivated about an acre of land, planted an orchard. His testimony is that he kept at work straight along on this land and tended his crop. (P. 169.)

His testimony has been quoted **supra**.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop, a fence, an orchard, etc., etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

200 U. S., 601, U. S. v. Clark:

> "It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobba."

BOYDS' ENTRY AND FINAL PROOF WAS IN STRICT ACCORDANCE WITH THE FORMS PRESCRIBED BY LAW AND DECEIVED THE TRAINED GOVERNMENT EXPERTS.

Not only was all of the foregoing true, but the evidence shows that Boyd made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Boyd, on May 24, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all

respects), to issue a patent some eight months later, to-wit, on Feb. 15, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 26.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

> "The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land

Office, whose **DUTY** it is to investigate and to hunt for grounds of doubt, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Elijah Z. Boyd, the entryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud on the entryman, Elijah Z. Boyd, and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 26) on June 21, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 95. that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On page 100 he swore that for several years prior to that time he had an office in Lake Charles. Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the per-

sons in charge of the latter's office. On page 104 he swore:

> Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?
>
> A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

Another Government witness, Elijah Boyd, swore, at p. 171, as follows:

> Q. (51) I see that J. M. Boyd is a witness on this deed? Did he have anything to do with the sale of this land to Wright-Blodgett Company?
>
> A. He did not.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey and his connection with the transaction, the record shows that at the time of the trial of this case he was dead. (R., p. 92.) There is not one single line of testimony anywhere in this record going to show that Wasey was ever on the land here in controversy, or had any knowledge of said land, beyond the information given in the estimate of J. D. Lacey & Company.

If we exclude the general, and because general, valueless statements to the effect that Wasey was in the parish, the sole testimony going to connect Nat Wasey

with the land in dispute is the testimony of the entryman, Boyd, which reads as follows (Rec., p. 170):

Q. Did you ever part with whatever title you had in that land?

A. Yes, sir.

Q. To whom?

A. I sold to Nat Wasey; he was supposed to be representing the Wright-Blodgett Company.

Q. To whom did you sell the land—Wright-Blodgett Company or Nat Wasey?

A. Sold to Nat Wasey, I suppose.

Q. Who acted as agent for the Wright-Blodgett Company?

A. Mr. Wasey.

Q. How far did he live from your place?

A. About twelve mile.

Q. Did he know you pretty well?

A. Just a short while.

Q. WAS HE EVER ON THIS LAND YOU ENTERED BEFORE YOU SOLD IT TO WRIGHT-BLODGETT COMPANY?

A. I CANNOT SAY THAT HE WAS; I NEVER SAW HIM.

Q. Had he been in that vicinity?

A. He had been in that section; I couldn't say he had been on the land.

Q. When he purchased this land from you did he make any inquiry as to whether you had complied with the homestead laws?

A. HE DID NOT.

(Rec., p. 174):

Q. When did Nat Wasey first speak to you about purchasing the land?

A. I couldn't say, positively.

Q. How long before you made the sale to him?

A. I couldn't say.

Q. Approximate it.

A. About a month after I had commuted it; I couldn't be positive.

Q. Now, Mr. Boyd, you understand you are under oath and are responsible for what you say. I want to ask you whether it is not true that Mr. Wasey, or some other agent of the Wright-Blodgett Company, approached you in regard to the sale of this land before you commuted it?

A. He did not, not to my knowledge.

Q. He may have, without your remembering it?

A. I don't think he did.

Far from sustaining the Government's contentions, this evidence, taken in connection with the other evidence, goes far to prove that Wasey had no reason to believe or suspect that Boyd had not fully complied with the law. If Wasey actually visited the land, and from the entryman's testimony it would appear that he did not, he saw on it a growing crop of peas and sweet potatoes, hogs, fences, a house with front and side porches, an orchard, and general signs of habitation and cultivation. He was not bound to seek for grounds of doubt. His business as a timber estimator required no more of him than a notation that there was a house and fields on the forty. This Court will not presume that he visited the land, nor will it presume that in this instance he did more than his business as a timber estimator required of him; nor will this Court presume that the Government's witness, Boyd, was not telling the truth when he swore that Wasey made no inquiry as to whether he, Boyd, had or had not complied with the homestead law. On the contrary, since Boyd was complainant's witness, and since Boyd's testimony is not contradicted by that

of any other witness, it would seem to appear affirmatively from this record that Wasey made no inquiry as to compliance **vel non** with the homestead law, but that he was content with the issuance to Boyd of the final receipt by the Government land experts.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

121 U. S. 381, Maxwell Land Grant Case:

> "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on

which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistence to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

123 U. S., 307, Colorado Coal & Iron Co. v. United States:

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had wit-

> nessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

133 U. S., 193, U. S. v. Hancock:

The syllabus reads:

> "Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for $1500.00, though it may be the subject of criticism, is not the **CLEAR, CONVINCING AND UNAMBIGUOUS PROOF** of fraud which is required to set aside a patent of public land."

197 U. S., 200, United States v. Stinson:

The syllabus reads:

> "The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.
>
> "In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

214 Fed., 523, Connor v. U. S.:

> "To authorize a Court to set aside and cancel a patent to lands issued by the United States, on the ground of fraud, the evidence must be clear, unequivocal and convincing, and it cannot be done on a bare preponderance of evidence which leaves the issue of fraud in doubt."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright Blodgett Company, Limited.

It must not be forgotten that a patent is the highest form of evidence as against the Government, and that this Court has repeatedly held that it will not annul a patent unless the evidence is absolutely conclusive and makes the annulment thereof imperative. We submit that no such case is here presented. It it not only not shown that the Wright-Blodgett Company was in bad faith in purchasing this land, but the Wright-Blodgett Company has succeeded in showing that it was in good faith in doing so. The testimony is that they had a large timber estimate of the entire tract, and that it was the custom of timber purchasers to buy on the faith of such estimates. There is no testimony to show that any special investigation of this particular tract was made, and there is affirmative testimony to show that before making the purchase the titles to the land were tendered by the Wright-Blodgett Company to Messrs. Pujo & Moss, one of the best known law firms in the State of Louisiana, and that that firm advised them that in all cases where final receipt had issued, they were perfectly safe in accepting the title without further investigation.

Under the circumstances, we submit that the good faith of the Wright-Blodgett Company is beyond question, and that against it the suit to annul the patent must be dismissed. We ask for judgment accordingly.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHELL,

Solicitors for Defendants.

January, 1915.

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 155

WRIGHT-BLODGETT COMPANY, LIMITED,

(Aiken, Jr., Case,)

versus

THE UNITED STATES OF AMERICA.

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHELL,
Solicitors for Defendants.

January, 1915.

E. P. Aucoin Ptg. Co., Brief Printers, 515 Natchez St.

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TABLE OF CASES.

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 154.

WRIGHT-BLODGETT COMPANY, LIMITED,

(Aiken, Jr., Case,)

versus

THE UNITED STATES OF AMERICA.

SYLLABUS.

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

   200 U. S., 601, United States v. Clark.
   200 U. S., 321, U. S. v. Detroit Lumber Co.

2. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which com-

mands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, Maxwell Land Grant Case.
123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.
197 U. S., 200, U. S. v. Stinson.

3. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.

4. When the United States, while attempting to discharge its obligation to show actual notice on the part of the defendant of the fraud in the entryman places the entryman on the stand and the latter swears that he took an agent of the defendant to the land, pointed out to him the improvements which he, the entryman, had placed upon it and "assured" said agent that everything which the law required had been done, the United States not only fails to prove notice in the defendant but affirmatively establishes its good faith and absence of notice.

STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. The charge of fraud is strictly confined to the failure to reside upon, improve and cultivate. (R., p. 6.) The homestead entryman, **Samuel S. Aiken, Jr.**, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R. pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt.** The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents J. M. Boyd and Nat Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt**; that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited,** bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation and other proofs of Allen and had issued a final receipt

to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

200 U. S., 601, United States v. Clark:

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

> "This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a **bona fide** purchaser, excepted as such from the invalidation of the patents by the act, and denied the material

allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry **(125 Fed. Rep., 776, 777)**, and considering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT**, but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. **Landes v. Brant, 10 How., 348; Bush v. Cooper, 18 How. 82; Myers v. Croft, 13 Wall., 291; United States v. Detroit Timber and Lumber Co., 200 U. S., 322.** See, further, **Ayer v. Philadelphia and Boston Face Brick Co., 159 Massachusetts, 84.** But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch

AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS, he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

"**WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT,** although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co., 200 U. S., 321.** The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

* * * * * * * * *

"* * * There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He

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ber and Lumber Co., supra, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

200 U. S., 321, U. S. v. Detroit Lumber Co.:

The facts in this case are stated in the opinion as follows:

> "The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.
>
> "The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

The Court held, page 329, **that the entrymen were in fraud.** The sole questions then left was the good faith **vel non** of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

> "In their brief counsel for the Government say:
>
> "'We claim that the law as laid down in **Hawley v. Dillon**, that one who takes title before the issuance of patent, cannot claim to be a **bona fide** purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'
>
> "We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the ven-**

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is the significan a receipt. The receipt is an ac-
the effect of a by the Government that it has re-
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ceived full pay him a patent. He is the equitable
title in trust and. It becomes subject to state
course issue to nder the control of State laws in
owner of the eyances, inheritances, etc. Carroll
taxation, and ow., 441; Witherspoon v. Duncan,
respect to con mmons v. Wagner, supra; Winona
v. Safford, 3 B Land Co. v. Minnesota, 159 U. S.,
4 Wall. 210; Si v Kessel, 128 U. S., 456; Hastings
and St. Peter . Co. v. Whitney, 132 U. S., 357;
526; Cornelius Co. v. Alta Mining Co., 145 U. S.
& Dakota R R
Benson Mining
428.
"Indeed, in some of the opinions of this Court,
emphasizing t he value of a receiver's receipt,
there are exp ressions which seems to underesti-
mate the sig ificance of a patent. Wisconsin

Central R. R. Co. v. Price County, 133 U. S., 496, 510; Deseret Salt Co. v. Tarpey, 142 U. S., 241, 251. * * *

197 U. S., 200, United States v. Stinson:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, **yet the respect due to a patent, the presumption that all preceding steps were observed** before its issue, and **the necessity of the stability of titles** depending on official instruments **demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.**

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and **it is a good defense that the title has passed to a bona fide purchaser for value without notice.** Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. * * *

"**United States v. Burlington & Missouri River R. R. Co., 98 U. S., 334, 342; Colorado Coal Co. v. United States, supra,** p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

" 'But it is not such a fraud as prevents the passing of the legal title by the patents. It fol-

lows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.' United States v. Marshall Mining Co., 129 U. S., 579, 589; United States v. California, Etc., Land Co., 148 U. S., 3, 41; United States v. Winona, Etc., Railroad Co., 165 U. S., 463, 479.''**

RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

> ''The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud.'' ''The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect.** It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.''**

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as com-

plainant in the suit, to prove that the Wright-Blodgett Company, Limited, had actual notice of the alleged fraud in the entryman, and since the bill of complaint specifically charged such actual notice through, and only through J. M. Boyd and Nat Wasey, it was incumbent upon the Government, as complainant, to prove that **KNOWLEDGE THROUGH THE MEN NAMED AND NOT OTHERWISE.** An attempt to show such knowledge through any other person or persons would have been clearly inadmissible under the pleadings, and evidence in support of such an attempt should have been excluded from the record.

The law on the subject is as follows:

121 U. S., 325, Maxwell Land Grant Case:

This was a suit by the United States to annul a grant of land. This Court said:

> "Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved.** In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill,

and the decree of the Circuit Court dismissing it is affirmed."

172 Fed., 950, United States v. Barber Lumber Company.

102 U. S., 372, United States v. Atherton:

"A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

"A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

Harrison v. Nixon, 9 Peters, 503.
Boone v. Childs, 10 Peters, 209.
Byers v. Swiget, 19 Howard, 309.
Rubber Co. v. Goodyear, 9 Wallace, 793.
United States v. Tichenor, 12 Fed., 425.
Phelps v. Elliott, 35 Fed., 461.
Platt v. Battier, 34 U. S. (9 Peters), 405.
Blandy v. Griffith, Fed. Cases, No. 10,529.
Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67.
Eyre v. Patter, 56 U. S., 42 (15 Howard).
98 U. S., 69 United States v. Throckmorton.

Although the foregoing authorities seem to leave no doubt of its obligation to affirmatively show that the Wright-Blodgett Company, Limited, had knowledge of the alleged fraud in the entryman and had acquired that

knowledge through Nat Wasey or J. M. Boyd, complainant failed utterly to bring such knowledge home to the Wright-Blodgett Company, Limited.

In support of the above statement, it might not be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 116-117.) It shows that when that company first went into Louisiana it secured from one of the best available firms of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant,** who swears as follows (Rec., p. 116):

> Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?

A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.

Q. Who are J. D. Lacey & Company?

A. Real estate men, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 116.)

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. **That is the usual case, the usual method of doing business.**

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so

high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no attention to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 125):

> Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?
>
> A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.
>
> Q. (9) Do you make any statement as to the condition of the house?
>
> A. None whatever; I do not.
>
> Q. (10) Do you pay any particular attention to the condition of the house?
>
> A. Not to the house, simply as to how its land is cleared.
>
> Q. (11) You attend to your business and see how much timber there is on the forty?
>
> A. That is my business, regardless of improvements.
>
> Q. That is the custom observed among all timber estimators?
>
> A. Yes.

(Page 127):

> Q. (2) **IN GOING UPON THESE LANDS, WOULD YOU MAKE ANY INVESTIGATION**

FOR THE PURPOSE OF ASCERTAINING WHETHER THE ENTRYMAN HAD COMPLIED WITH THE LAWS SO AS TO ENTITLE THEM TO A FINAL RECEIPT?

A. **I never did.**

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the final receipt, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that even had a timber estimator of the Wright Blodgett Company, Limited, such as Wasey gone upon the land, he would not have paid any particular attention to the entryman's compliance or non-compliance with the law.

The testimony further is that the Wright-Blodgett Company, Limited, defendant herein, made it a custom

to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana, (Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

Wingate testified (Tr., p. 178):

> Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?
>
> A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.
>
> Q. They did not purchase any lands until Pujo & Moss approved the title?
>
> A. That was my understanding.

Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 124):

> Q. At the time you first went into the office, however, the custom was to submit all titles,

whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?

A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 129):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts

ght back to the office, after the
of title to be brou ed from the different owners,
deeds were acquire carried on the abstract, so
and these deeds would show our opinion of the
that our opinions ht-Blodgett Company; in some
titles in the Wrig e were two written opinions.
cases, I recall, the

(Rec., p. 132): fice called upon to pass upon all

Q. Was your o s made by the Wright-Blodgett
deeds and purchas
Company? but the first transaction. My

A. I think all when the company first organ-
recollection is tha a very large tract of land from
ized it purchased the Fairbanks people, and ac-
parties in Chicag t of my recollection that pur-
cording to the b fore Pujo & Moss ever saw the
chase was made h ere the Wright-Blodgett Com-
abstract of title. ase direct from entrymen or

Q. In cases w would you be called upon to pass
pany would purc here there was no transfer nor
Government land, ction?
upon such title w recollection, that the abstract
intervening trans n either before or after issuance

A. That is m bstract would always be brought
would be brought uance of the patent, or showing
of the patent; the final receipt, and our opinion
in showing the is out it, and in somes cases, if not
simply issuance ions would be given, and then
would be asked a s acquired in the name of the
in all, written op ompany, either the same ab-
after the deed w would be made up and brought
Wright-Blodgett tion and opinion. Afterwards,
stract or a new o d to us that he wanted opinions
in for our exami
Mr. Kelley explai

from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner, so that in the event of sale subsequently these written opinions could be used.

(Page 123):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 134):

Q. (30) **Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?**

A. **No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.**

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the

attitude of the Calcasieu bar prior to the coming of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 135 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified on page 138 that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 52.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they

bought it on the faith of the general estimate made by J. D. Lacey & Company, without making any special investigation of the land other than the single visit paid to it by Wasey, which visit will be referred to. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases**, where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. Even if their agent, Wasey, went upon the land, he went as a timber estimator and paid little or no attention to the improvements, but confined his attentions to the timber located thereon.

On this subject **Foster**, page 127, Question 8, testified as follows:

> Q. In going upon these lands, would you make any investigation whether the entryman had complied with the law so as to entitle him to a final receipt?
>
> A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Aiken, Jr., the entryman. Thus the Government's own witnesses show that Samuel E. Aiken, Jr., went upon the land and built a house, which he furnished with a cot and a bench, a chimney, cooking utensils and a wash basin, and in which he kept his saw and hammer and plough tools. He cleared something over an acre of ground, and in his clearing planted a crop of peas and corn. The house was kept in order and the whole establishment looked after generally. The testimony on this subject is on Tr., pp. 184-185.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop and a place kept in order, etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

200 U. S., 601, U. S. v. Clark:

> "It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which

he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobban."

AIKEN'S ENTRY AND FINAL PROOF WAS IN STRICT ACCORDANCE WITH THE FORMS PRESCRIBED BY LAW AND DECEIVED THE TRAINED GOVERNMENT EXPERTS.

Not only was all of the foregoing true, but the evidence shows that Aiken made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Aiken, on Sept. 18, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all respects), to issue a patent some nine months later, to-wit, on April 1, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 25). That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 8):

> "The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land Office, whose **DUTY** it is to investigate and **to hunt for grounds of doubt**, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-

Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Samuel S. Aiken, Jr., the tnryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud in the entryman, Samuel S. Aiken, Jr., and there is no proof in this record that this purchase was made other than in the normal manner.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on Sept. 28, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 108, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On pages 113 and 122 he swore that for several years prior to that time he had an office in Lake Charles. Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 117 he swore:

> Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?
>
> A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey, the record shows that at the time of the trial of this case he was dead. (Rec., p. 62.)

In order that the matter may be clearly before the Court, we refer the Court to the entire testimony of the entryman, at Record p. 181 to 195, calling the Court's attention to the fact that the entryman was placed upon the stand by the United States Government and that it is, therefore, bound and precluded by his statements.

The salient points of the testimony of Aiken, insofar as the Wright-Blodgett Company, Limited, are concerned, are the following statements, which we quote for emphasis. These statements are not entirely in accord with other statements made by Aiken, a fact which the Government called to Aiken's attention on page 193. Aiken replied that in giving the other statements, he had misunderstood the question.

(P. 188):

> Q. And on the place on which you did make an entry you erected a log house?
>
> A. Yes, sir.
>
> Q. You furnished that house with a cot to sleep on, and cooking utensils, plow tools, and

what else did you have in there—a place to wash up?

A. Yes, sir; had a basin.

Q. Have any chair?

A. I had a bench.

Q. The house had a brick chimney?

A. No, sir; a dirt chimney.

Q. The whole house had the appearance of being inhabited?

A. I suppose so.

Q. You kept it in good order?

A. As well as a man can.

Q. You got your place cleared up?

A. Yes, sir.

Q. You planted a crop and raised a crop?

A. Yes, sir.

Q. The only time that you knew Nat Wasey was a few days before you met him at the post-office?

A. Yes, sir; personally.

Q. You had heard of him before that?

A. Yes, sir.

Q. You took him over there and showed him the improvements?

A. Yes, sir; we went together, I and Wasey.

* * * * * * * * *

Q. You thought at the time that you made your final proof, Mr. Aiken, that you were complying fully with the law?

A. Yes, sir.

Q. You were in absolute good faith as far as you knew in proving up your homestead?

A. Yes, sir.

Q. You had no reason to believe that you had not done everything that the law required?

A. That was my honest opinion.

Q. **YOU TOLD NAT WASEY THAT YOU HAD DONE EVERYTHING THAT THE LAW REQUIRED?**

A. **THAT IS THE WAY THE TRADE WAS MADE.**

Q. **ON THE GROUND THAT YOU HAD DONE EVERYTHING THAT THE LAW REQUIRED?**

A. **YES, SIR.**

Q. **HE WAS ASSURED OF THAT FACT?**

A. **YES, SIR.**

(P. 194):

Q. When you and Wasey were going over the land, talking over the homestead, talking over the purchase of it, he asked you where you lived during the life of the homestead?

A. No, sir; he asked me where was my post-office.

Q. Did he ask you how long you had been living there?

A. No, sir.

Q. Did he ask you whether or not you had lived on the homestead at all?

A. No, sir; not with my family.

Q. Did he ask you whether you lived on it at all without your family?

A. **HE ASKED IF I HAD EVER DONE ANYTHING THERE AND I TOLD HIM I PUT A HOUSE AND HAD A FIELD THERE AND SHOWED IT TO HIM.**

Q. What did you tell him?

A. I told him that I had built a house and had a field there.

Q. Did you tell him how long you had lived there?

A. No, sir; he did not ask me.

Q. Then, all you told him was that you built the house?

A. Yes, sir. Built the house. It has been so long it is pretty hard to remember those things.

Q. But you tell me one thing and tell Mr. Monroe another; I want to know the facts. Did you make any statement to Mr. Wasey as to whether or not you had lived on that land at all, to the best of your knowledge?

A. **I TOLD HIM THAT I HAD BEEN THERE AND WORKED THERE MYSELF, AS WELL AS I REMEMBER.**

As we observed above, Wasey was dead when this case was tried, and so necessarily he could not testify. But from Aikens own testimony (and Aiken is a Government witness) it appears that Aiken took Wasey to the land, pointed out to him the improvements, consisting of a house, a acre and a half under cultivation, the house furniture, consisting of washing and cooking utensils, the chimney, the plow tools and the sleeping cot, and told him, nay, **assured him**, that he, Aiken, had done everything which the law required of him in the making and commuting of the homestead entry. To put it in Aiken's words the trade was made on the theory that he, Aiken, had done everything which the law required of him.

This evidence is adduced by the Government as proof of the fact that Wasey knew at the time the land was

purchased that Aiken, Jr., had not complied with the law. With all due respect to the gentlemen who successively have propounded this theory to the Court, it seems to us that this evidence proves just the reverse. If we are to believe Aiken, it proves that Wasey was assured by him that he had complied fully with the law, and it proves that in substantiation of the statement so made by Aiken, Wasey was shown the mute evidence in the form of the house, with its surrounding acre and a half of plowed land, its washing and cooking utensils, its plow tools, etc. As far as we are able to see, there was no reason why Wasey should have doubted the statement of Aiken, Jr., corroboratd, as it was, by this evidence, and further corroborated by the fact that the Government itself had accepted Aiken Jr's., proofs and issued to him his final receipt. There was no charge laid upon Wasey to hunt for grounds of doubt; there was a charge laid upon the Government to hunt for just those grounds. The facts which Aiken, Jr., narrated to Wasey were fully substantiated by the mute evidence and strongly corroborated by the final receipt, particularly the latter, since the issuance of the final receipt proclaimed to the world the fact that the United States Government had investigated the homestead entry of Aiken, Jr., and after investigation had received his final proofs and issued to him his final receipt. For this reason we submit that the Government has not only failed to show that the Wright-Blodgett Company, Limited, at the time of its purchase had any notice of any failure on Aiken's part to comply with the law, but it has affirmatively shown that the Wright-Blodgett Company, Limited, actually had tangible evi-

dence in its hands, upon which it was entitled to rely, of the fact that Aiken, Jr., had complied fully and completely with the law.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

121 U. S. 381, Maxwell Land Grant Case:

> "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully

sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistence to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

123 U. S., 307, Colorado Coal & Iron Co. v. United States:

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained,

> from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

133 U. S., 193, U. S. v. Hancock:

The syllabus reads:

> "Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for $1500.00, though it may be the subject of criticism, is not the clear, convincing and unambiguous proof of fraud which is required to set aside a patent of public land.'

197 U. S., 200, United States v. Stinson:

The syllabus reads:

> "The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.
>
> "In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright-Blodgett Company, Limited, but on the contrary, will show that that company purchased **upon the assurance** of the entryman that he had complied with the law, which assurance was corroborated by the mute evidence furnished by the house, the ploughed field, etc., and contradicted by nothing whatever.

For these reasons we submit that the judgment of the Court of Appeals is erroneous and should be reversed and a decree entered dismissing the bill.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHELL,

Solicitors for Defendants.

January, 1915.

INDEX.

CITATIONS.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

WRIGHT-BLODGETT COMPANY, LTD., appellant, *v.* THE UNITED STATES.	No. 151.
WRIGHT-BLODGETT COMPANY, LTD., appellant, *v.* THE UNITED STATES.	No. 152.
WRIGHT-BLODGETT COMPANY, LTD., appellant, *v.* THE UNITED STATES.	No. 154.
WRIGHT-BLODGETT COMPANY, LTD., appellant, *v.* THE UNITED STATES.	No. 155.
WRIGHT-BLODGETT COMPANY, LTD., appellant, *v.* THE UNITED STATES.	No. 156.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

In these five cases separate bills were brought by the Government in the Circuit Court for the

Western District of Louisiana against the appellant corporation and one other defendant, in each case to cancel land patents which had been issued under the homestead laws to the individuals named as defendants. While there is a separate record in each case, the questions involved are similar, where they are not identical, and we shall therefore, for convenience, and to save the time of the court, present and discuss all five cases in one brief. The following facts appear from the bills and the entry papers:

In No. 151 the entry involved was made October 19, 1898, by *Joe J. Hicks* for 161.24 acres of land in the Natchitoches land district, Louisiana. (R., 33.) In the commutation proof, offered June 11, 1901, under the provisions of section 2301, R. S., the entryman and his two witnesses testified that he settled upon the land in February, 1899, and built a house and established residence in March of that year; that he and his family had not been absent from the land more than four months at any time, had cultivated two acres, raising two crops thereon, had erected a dwelling house, with a chimney and gallery, and planted fruit trees, the total value of the improvements being $100 (R., 40–44). This proof was taken before James M. Boyd, a United States commissioner, and upon its being filed in the local land office the register issued final certificate thereon July 6, 1901. (R., 48.) Patent was subsequently issued April 1, 1902. (R., 49.) In the

meantime, on July 10, 1901, four days after the issue of the final certificate the entryman sold the land to the appellant. (R., 29.)

In No. 152 the entry involved was made by *Walter O. Allen* April 10, 1899, for a quarter section of land adjoining that of Hicks. (R., 27.) Commutation proof was offered June 11, 1901, before Boyd, in which the entryman and his two witnesses testified that settlement was made upon the land in April, 1899, and actual residence established at the same time; that the entryman and his family had resided continuously on the homestead since establishing residence thereon, not having been absent at all; that two crops had been raised on two acres, the improvements made on the land consisting of a dwelling house, with a chimney, gallery, a crib, and stables and fruit trees, valued at $100. (R., 35–39.) Upon this proof the register issued final certificate July 8, 1901. (R., 4.) The patent was issued July 5, 1902. (R., 23.) Prior to the issue of patent on July 10, 1901, only two days after date of the final certificate, the entryman conveyed the land to the appellant. (R., 56.)

In No. 154 the entry was made January 13, 1900, by *Elijah Z. Boyd* for 80 acres in the same township. (R., 32.) Commutation proof was made before Boyd May 18, 1901. In this proof the entryman and his two witnesses testified that he settled and established actual residence January 14, 1900; that he had not been absent at all; that

he had raised a crop on two acres; that the improvements consisted of a house 12 x 14, with fruit trees, all valued at $75. (R., 37–43.) Final certificate was issued May 24, 1901 (R., 45), and the patent February 15, 1902 (R., 26). In the meantime, on June 21, 1901, one month after the issue of final certificate, the entryman conveyed the land to the appellant. (R., 54.)

In No. 155 the entry involved was made by *Samuel S. Akin, jr.,* May 4, 1899, for 163.42 acres in the same township (R., 31), and commutation proof was offered before the same United States commissioner August 17, 1901. In this proof the entryman and his two witnesses testified that he settled and established actual residence May 4, 1899; that he and his family had resided there continuously, not having been absent at all; that the improvements consisted of a log house 16 by 18, with side room and stables and orchard, all valued at $75; and that two crops had been raised on two acres. (R.,36–41.) Final certificate was issued September 18, 1901 (R., 44), and patent April 1, 1902 (R., 23). In the meantime, on September 28, 1901, 10 days after the issue of the final certificate, the entryman conveyed the land to the appellant. (R., 59.)

In No. 156 the entry involved was made by *Samuel E. Bryers* January 31, 1900, for 75.65 acres, in the adjoining township. (R., 39.) Commutation proof was made before Boyd August 17, 1901, the entryman and his two witnesses testify-

ing that he settled and established actual residence February 1, 1900; that he and his family had resided there continuously, not having been absent at all; that the improvements consisted of a lumber house, 12 by 12, with a crib and orchard, valued at $80, and that two crops had been raised on two acres. (R., 46–51.) Upon this proof the register issued final certificate September 18, 1901 (R., 54), and the entry was patented April 1, 1902 (R., 23). In the meantime, on September 28, 1901, 10 days after the issue of the final certificate, the entryman conveyed the land to the appellant. (R., 31.)

The bills charged that the final proof made by the respective entrymen was false and fraudulent in that they had not established actual residence upon their lands as alleged in their proofs, or at any time at all; that they had not resided on their lands continuously, or in any other manner; had not cleared the quantity of land said to have been cleared; had not cultivated the same as alleged; and that when it purchased the respective tracts from the entrymen the appellant company then and prior thereto had notice through its agents, James M. Boyd and Nat Wasey, and was well advised of each and every detail of the false and fraudulent methods adopted by the entrymen in procuring the issuance of the patents; and that the appellant thus knowing and being advised of the fraudulent acts and doings of the entrymen did, through its officers, whose names were unknown to

the plaintiff, aid, assist, advise, and encourage the commission of each and every one of said acts and things with the fraudulent purpose of obtaining title to the lands in the manner described (pp. 7–10 of each record).

In each of the cases the appellant filed an answer in which it admitted the making of the entries as set forth in the respective bills of complaint and its purchase of the land from the entrymen, but disclaimed all knowledge of any fraud or misrepresentations in the proofs offered by the entrymen and claimed that in purchasing the lands it had relied upon the good faith of the entrymen and the integrity of their proofs. It especially denied that Nat Wasey or James M. Boyd, the persons mentioned in the bills of complaint as appellant's agents, had been or were its agents intrusted with investigation and solicitation for the purchase of lands, and denied that through them *or otherwise* it knew of the alleged fraudulent acts and statements set forth in the bills of complaint, and that through its officers or otherwise it aided, assisted, or encouraged the commission of any of the alleged fraudulent acts. The answers are substantially the same in each case and will be found in No. 151 at pages 15–16; No. 152, pages 15–16; No. 154, pages 19–20; No. 155, pages 15–17; No. 156, pages 15–17. In only one case did the defendant entryman file an answer. That was done in No. 154, where the entryman, Boyd, filed an answer denying all the

allegations of the bill charging fraud and misrepresentation. (R., 16–18.) In each of the other cases the defendant entrymen either affirmatively consented that decrees might be entered against them or took no action and decrees were entered through default.

The testimony in all of the cases was taken at or about the same time. Indeed, much of the testimony in one case was by stipulation made to apply to the other cases. This was particularly true of the testimony intended to show that the appellant had notice of the alleged frauds by which the title was acquired.

The Circuit Court having gone out of existence when the cases came on for hearing, they were decided by the District Court and a decree was entered in each case granting the prayer of the bill, there being no written opinion. (R., 151, p. 22; R., 152, pp. 21–22; R., 154, pp. 24–25; R., 155, p. 22; R., 156, p. 22.) Separate appeals were taken by Wright-Blodgett Company to the Circuit Court of Appeals where the action of the District Court was affirmed, all of the cases being embraced in the following brief opinion:

> The above entitled and numbered cases are separate appeals from separate decisions of the United States District Court for the Western District of Louisiana, and in each of them we find that fraud in the homestead entry is proved, and that Wright-Blodgett & Company, vendees of the

alleged homesteaders, are charged through their active agents on the ground with knowledge of the fraud.

The decree in each of the above mentioned cases is affirmed. (R., 151, pp. 176–177.)

Petition for rehearing was denied by the Circuit Court of Appeals March 18, 1913 (R., 151, p. 182), whereupon the appellant sued out appeals to this court.

ARGUMENT.

I.

The two lower courts having concurred in finding that the testimony respecting cultivation, residence, and improvements was false, and that the appellant had notice through its agents on the ground at the time of its purchase, the finding should not be disturbed unless clearly erroneous.

We shall not take the time of the court to elaborate this point, as the rule is well settled. (*Texas & Pacific Ry. Co.* v. *Railroad Commission of Louisiana,* 232 U. S., 338; *Gilson* v. *United States,* 234 U. S., 380.)

II.

There is evidence to support the findings.

While the evidence in regard to residence, cultivation, and improvements by the respective entrymen is necessarily different in each case and must therefore be separately considered, before doing that we shall refer to that portion of the evidence

which was offered to show that the appellant's agents, through whom the various tracts of land were purchased, were fully advised of the manner by which title had been acquired from the Government.

The testimony of the several witnesses mentioned in this connection is applicable to all five cases and forms a part of each of the separate records, but for convenience reference will be made here only to the record in case No. 151, involving the entry made by Joe J. Hicks.

The appellant's Louisiana office was located at Lake Charles, in charge of one Michael Kelly. (R., 111.)

Ben M. Foster, a witness for the plaintiff, testified that in the fall of 1901 he entered the employ of Wright-Blodgett Co., serving under Mr. Kelly (R., 90); that prior to that time the company had employed Thomas E. (B.) Dickens (R., 104), and that when witness went to work for Wright-Blodgett Co. Nat Wasey was in the latter's employ, serving as a "woodman." When asked what he meant by a "woodman," he answered: "Well, he was employed to inspect timber for the company and make reports on it." (R., 91.) These reports by Wasey were made for the purpose of buying. (R., 92.) He states that in cases where there was a patent or receiver's receipt for the land the company would buy merely upon Wasey's report. (R., 93.)

34. Without any further investigation?

Yes, sir.

35. Was Mr. Wazey located in Lake Charles, or did he live in the country where he bought timber?

He lived in the woods.

36. Was it part of his business to live in the woods and go around where the land was?

He could find out thing(s) at less expense by living in the woods.

37. Where did he spend his time?

In the woods. (R., 93.)

This witness further testified that Wasey had been in the company's employ possibly three years before witness entered it (R., 93); that Kelly had been managing the company's business since as early as 1898 (R., 95); that Kelly frequently went with Wasey into the woods to verify the latter's estimates, and things of that kind; that witness made one or two trips with Kelly, maybe several, and was present on occasions when Wasey paid for the land (R., 96); that money was sent to Wasey for the purpose of buying land; more than $2,000 was sent him at times (R., 103); that he was the one who generally paid for lands (R., 94); and "usually he got enough money to pay for the lands he had written in about. If several sales had been made, he might have gotten as much as $5,000 at one time; but if only one sale, it would have been correspondingly less" (R., 103).

That Wasey inspected all of the lands purchased by the company is apparent from the following testimony of this witness, which completely disposes of counsels' claim that the appellant in making purchases relied upon the general cruise which it had procured from Lacey & Co.:

> 38. Mr. Monroe has called your attention to the fact that a cruise or report had been made on lands in this territory about 1898. In cases where lands were bought upon the recommendation and report of Mr. Wazey what would govern the action of the company, the report of Mr. Wazey or the record of the cruise?
>
> As a general thing there would not be much difference between the reports, but if there should be Mr. Wazey was sent back to see if an error had been made.
>
> 39. If he stated that no error had been made in the report, what action would be taken?
>
> His report would be accepted. (R., 104.)

Upon cross-examination this witness was asked:

> 1. As I understand, Nat Wazey would go through the country and get price on various lands, would bring them back and submit them to the Lake Charles office of Wright-Blodgett Co.; the Wright-Blodgett Co. would then have the titles passed upon, and if the prices were all right and the titles correct would instruct Mr. Wazey to purchase and would give him money to complete the purchase with. Is that correct?
>
> A. That is correct. (R., 105.)

James M. Heard, another witness for the plaintiff, testified that Wasey was buying timber and accepting deeds for the Wright-Blodgett Company in the years 1899, 1900, and 1901.

Q. Do you know that of your own personal knowledge?

A. I do. (R., 66.)

Witness W. A. Winfree, who was employed in the sheriff's office in Leesville in 1898 and was deputy clerk for several years from June, 1900 (R.,73),stated that Nat Wasey was in the clerk's office frequently, once a week or once a month. (R., 75.)

Q. What would his business be?

A. Filing papers for record.

Q. What kind of papers?

A. Kind of certificates and deeds, sometimes he would file them and sometimes he would make affidavit and send it to the Wright-Blodgett people at Lake Charles, and they would return it for recordation. (R., 76.)

Thomas E. Wingate, whose home was in Leesville,also bought lands for the appellant. (R.,154.) He knew that Wasey was agent for the company, because he assisted him in transactions, sales, etc., and would see him buy and pay for lands for the company. (R., 157.) He also knew that Dickens was employed by Wright-Blodgett Company.

30. How do you know that?

A. From correspondence and conversations had with him and business transac-

> tions with him. Mr. Dickens was Mr. Kelly's, I would term it, private secretary. He was stationed at Lake Charles in the office; kept his books, made his maps, looked after his correspondence. If Mr. Dickens cruised timber or went into the woods and purchased and purchased land, I know absolutely nothing bout it. (R., 157.)

In the absence of Kelly, Mr. Dickens was in charge of the office. Pujo & Moss were their counsel, and Mr. Dickens would confer with them. (R., 158.) Kelly frequently visited Leesville personally and so would Dickens. Wasey was employed to look after the land of the Wright-Blodgett Co. and to purchase timber. He was the company's field man. (R., 159.) This was made even clearer or cross-examination. (R., 160–161.)

C. D. Moss, the only witness called by the appellant, and whose law firm was employed by Kelly to examine the company's abstracts of title, further testified that Dickens was in the company's office prior to the time that witness Foster entered its service, and that Nat Wasey did some work for the company in the field. (R., 112, 113.)

The foregoing clearly shows that the appellant, a Michigan corporation, was engaged in purchasing timber lands in Louisiana from 1898, or soon after, until after 1902, through its agents, Michael Kelly and his assistants, Dickens, who was employed in the office, Foster, who followed Dickens, and Nat Wasey, who was the company's woods-

man employed to inspect all land offered for purchase. We shall now, therefore, examine the evidence relating to the manner in which title was acquired to each of the several tracts involved and the circumstances under which those tracts were purchased by the appellant.

Case No. 151, Hicks' Entry.

This entry was made October 19, 1898 (R., 33), following the summer during which Hicks moved to the town of Leesville (R., 130). He maintained a home in the town, which was some 20 miles from his homestead (R., 128), and lived there with his family continuously (R., 58, 59, 123). He was elected county clerk in April, 1900. (R., 67.) Hicks himself testified that during the lifetime of the entry he would visit it "once about every four months," when he would "spend the night." R., 123.) Walter O. Allen, Hicks' brother-in-law, who entered the tract adjoining and was supposed to guard the Hicks land, testified that the only crop planted was peas, which "never matured to make enough for the seed that was put in the ground," and was not cultivated or attended to "to amount to anything." (R., 137.)

There is no question whatever that Hicks wholly failed to comply with the requirements of the statute respecting residence and cultivation, and, indeed, no attempt was made by the appellant to

refute the showing made by the Government in this connection.

It is equally clear from the evidence that the appellant's agents, Thomas B. Dickens, who negotiated the purchase of the land, and Nat Wasey, its inspector, knew that Hicks had not complied with the requirements of the homestead law. This is best shown by the entryman's testimony. (R., 124 et seq.)

> 39. In making this commutation of your entry was it necessary to pay any sums of money to the Government?
>
> A. Yes, sir.
>
> 40. How much?
>
> A. Right around $400 for each entry.
>
> 41. Where did you get the money?
>
> A. Mr. Dickens, who was in the employ at that time of the Wright-Blodgett Co., visited Leesville frequently, and a short time before the fourteen months' period had expired he asked me something about the homestead, and I told him, "Yes; I have a homestead," and he asked me then * * * what I was going to do with the land. I told him I guess I would sell it after I made my proof. The question then came up as to the commutation money, and Mr. Dickens remarked, "I will loan you the money." I told him "all right," and after I had received my final receipt Mr. Dickens came to Leesville and made me an offer on the land, which I accepted.

42. In compliance with his promise of Mr. Dickens, did he ever loan you or advance you any money?

A. Yes, sir.

43. State the circumstances, amounts, etc.

A. Well, three or four days, as well as I remember, before the day for making the proof I wrote Mr. Dickens that I would need about $200. He sent me check for that amount. Upon forwarding the proof, together with that amount of money, to the land office at Natchitoches I was advised by the officials that the land was situated out of the $1.25 limit, and that I would be required to pay $2.50 per acre, and to the best of my recollection I mailed Mr. Dickens the letter that I had received from the land office and he mailed me check to cover the balance.

44. Where did you address Mr. Dickens? * * *

A. Lake Charles.

45. Do you know for whom Mr. Dickens worked at that time?

A. I know from hearsay.

46. From his own statement?

A. I only know by this: I was clerk of court and Mr. Dickens visited my office frequently, looking after matters pertaining to deeds conveying lands to Wright-Blodgett Company.

47. Did Mr. Dickens state to you whether or not he was furnishing you this money for commutation of land personally or for some one else?

A. I do not know.

48. After the commutation of this land did you receive any final receipt or receiver's receipt?

A. Yes, sir.

49. Did you ever make a sale of this land?

A. Yes, sir.

50. To whom?

A. Wright-Blodgett Co.

51. Examine this and see if it, to the best of your knowledge and belief, (is) a correct copy of the act of transfer?

A. I could not say. I believe it was on a printed form.

52. Is this a correct copy?

A. Yes, sir; I am sure—in fact, I know—it is the deed of 1901.

53. You sold the land to Wright-Blodgett Company?

A. Yes, sir.

54. Who represented Wright-Blodgett Co. in the making of this sale?

A. Mr. Dickens.

55. This deed recites that it is made for a consideration of $800. Was that amount paid you for the land?

A. Yes, sir.

56. Was it paid in cash?

A. Yes, sir.

57. State whether or not it is a fact that upon the making of this sale you were paid $800 in cash, or $800 less the amount already advanced you for commutation?

A. I was paid the amount less the checks sent me before.

58. Then the money advanced you by Dickens for commutation of this land was applied when the land was sold Wright-Blodgett Co. as part of the purchase price?

A. I believe it was.

59. Don't you know?

A. Yes; I know it was by their deduction.

60. Did Mr. Dickens at any time before the commutation or after, or before the sale or after, make any inquiries of you as to what extent you had complied with homestead laws regarding this land?

A. No, sir.

61. How often did Mr. Dickens come to Leesville?

A. He was there quite frequently. I don't remember. Sometimes 60 or 90 days; at other times once a month.

62. You were living openly with your family at Leesville?

A. Yes, sir.

63. Was Mr. Dickens ever at your home?

A. Yes, sir.

64. Do you know from statements made by him whether or not he was aware that you were living at Leesville?

A. He must have known.

65. You were clerk of court at the time?

A. I was.

66. Do you know whether Mr. Dickens ever went out at any time and investigated this land to see if it was probably settled, or lived upon, or the homestead laws were complied with?

A. I do not know.

67. Do you know Nat Wazey?

A. Yes, sir; I did know him.

68. How long had you known Wasey at the time you commuted this land.

A. I think I met Mr. Wazey before I was elected clerk of court; about the time I began work for Mr. Winfree in 1899.

69. Did you ever have any talks with Mr. Wazey regarding this land?

A. No, sir.

70. What was Mr. Wazey's occupation?

A. I didn't know; I heard afterwards. Everybody seemed to know he was buying land for Wright-Blodgett Co. * * *

71. Do you know where Nat Wazey lived?

A. No, sir. I can not say that I did. I was never at his residence or his place. I only heard that he lived in the eastern part of the parish.

72. Do you know where the field of Mr. Wazey's activity and occupation for the Wright-Blodgett Co. was?

A. Well, principally in the southeastern portion of the parish.

73. In the vicinity of your homestead?

A. My homestead was a little out of the main part of his territory, I think; that is, where he bought the principal part of land.

74. Mr. Hicks, during the life of your entry, before the sale of the land to Wright-Blodgett Co., was, or not, Nat Wazey frequently in the clerk's office at Leesville?

A. Up to that time, not very often.

75. Was he there occasionally?

A. Yes, sir.

76. Was Wazey ever at your house?

A. No, sir.

77. Do you know from his acts or words that he was aware of your living there?

A. I do not.

78. Do you know whether he was aware that you were clerk of court at Leesville at the time he would file deeds and papers with you?

A. Yes, sir.

79. How far was this homestead of yours from Leesville?

A. In the neighborhood of 20 miles. About 20 or 25 miles.

80. Any railroad connecting the places?

A. No, sir.

81. Any trolley lines of any kind?

A. No, sir.

82. How long would it take you to make a trip from your homestead to Leesville?

A. About five hours.

83. By what method of travel?

A. Buggy.

CASE NO. 152, ALLEN'S ENTRY.

Allen's entry was made April 10, 1898 (R., 27), and proof was made June 11, 1901 (R., 35), final certificate issuing July 8, 1901 (R., 44). Allen was a brother-in-law of Hicks, the entryman in case 151 and their two entries adjoined. (R., 116.) A combination house was built for Hicks and Allen. Peas were planted that did not mature. The house had openings for windows but no glass.

The entryman testified that he lived in Leesville at the time he made the entry and never took up actual residence on the land. He would visit his entry at intervals of four, five, or six months, staying overnight, and that was the extent of his residence. (R., 117.) When asked if he had completed his entry in any way, he answered: "I never did myself, but it was obtained. I never made application. It was all done through Mr. Hicks." (R., 117.) He further testified that it required $2.50 per acre to commute the entry, which embraced 160 acres, and when asked whether he had furnished the money himself, he said: "I had no funds. I had no money to pay it." (R., 118.)

46. You obtained this money from some other source?

A. Yes, sir.

47. From whom?

A. I never received a dollar from anybody.

48. This money was paid before (for) you by some one else?

A. It was.

49. By whom?

A. Mr. King furnished the money. (R., 119.)

(This witness when recalled stated that by King he meant Dickens, R., 124.)

50. Who was Mr. King?

A. Supposed to be representing the Wright-Blodgett Company.

51. What is your reason for believing that he represented the Wright-Blodgett Company?

A. He was the man that offered to buy, representing himself as representing the firm. He said he was.

52. Upon this commutation, or after this commutation, did you receive a final receipt—register or receiver's receipt?

A. Yes, sir; I did.

53. Do you still own these lands?

A. I do not.

54. When did you part with them?

A. Within 30 days after I received the receipt.

55. How did you part with them?

A. A consideration of about $800.

56. You sold them?

A. Yes, sir.

57. Who to?

A. To Wright-Blodgett Company.

58. Was it cash or credit act?

A. Cash.

* * * * *

64. Who was it carried on the negotiations for the sale, made the offer, and paid the money?

A. It was all done through Mr. J. J. Hicks. (R., 119–120.)

Upon cross-examination this witness testified:

6. What furniture did you have in the house?

A. I don't know that I had any. Chair and bench.

7. When you stayed over night and when your wife and daughter stayed over night, as you testified they did, where did they sleep?

A. We fetched bedclothes with us in a wagon and used them while we were there and took them back.

8. Leave any bedstead in there at all?

A. No, sir.

9. Any cots?

A. No, sir; never had one there.

10. Was there a bunk built in the house?

A. There might have been something like that. I believe there was something of that kind.

11. Don't you remember a bunk there, Mr. Allen?

A. No; I couldn't tell whether there was or not.

12. Your impression, as you sit there, is that there was?

A. A very faint one. (R., 121.)

Joe J. Hicks, the entryman in case 151, when called as a witness in this case, testified that during the lifetime of the entry Allen lived in the country some three miles from the homestead (R., 128); that he assisted Allen in commuting the entry, having raised the necessary money. When asked to state the circumstances and where the money came from he answered:

It came through the same channel as mine did. It all came together. About the time the fourteen months had expired Mr. Dickens

of Lake Charles inquired of me if myself and Mr. Allen *intended to sell our land* after making proof, and I told him that we did. I told him that Mr. Allen was not financially able to raise the money with which to commute his, and that I needed some money myself, and he said, "I will loan you the money," and afterwards, three or four days before the commutation, or the day before taking the proof, Mr. Dickens sent me check for about $400, intending it to cover each entry, I suppose. After making the proof and sending it, together with about $200 in each case, we were notified by the land office at Natchitoches that the land was within the double minimum, which was $2.50 per acre. This letter I forwarded to Mr. Dickens at Lake Charles, and he sent me check covering the remainder. I don't remember exactly the amount.

37. Do you remember how this check sent you by Dickens was signed?

A. Signed by Dickens himself, personally.

39. Do you remember who it was on?

A. It was on the Calcasieu bank; I believe it was the Calcasieu National Bank.

40. When did you first meet Mr. Dickens? What were his initials?

A. Thos. B., since I have refreshed my memory. I never knew him until after June, 1900, after I was elected clerk of court.

41. What was the occasion of your meeting him?

A. He came to my office to file deeds, looking after matters of record and pertaining to lands owned by the Wright-Blodgett Co.

42. Do you know by whom the deeds and papers filed by him were paid for?

A. I do not know.

43. Can you give any information as to who paid these bills?

A. They were paid by Wright-Blodgett Co.

44. Did Mr. Dickens ever state to you by whom he was employed and in what capacity?

A. I don't know that he did.

45. Do you know whether or not he made negotiations for the purchase of lands by the Wright-Blodgett Co.?

A. I don't know anything further than in mine and Mr. Allen's case.

46. The deeds in those cases were made out to Wright-Blodgett Co.?

A. Yes, sir.

47. They were recorded in Leesville?

A. Yes, sir.

48. Do you know who paid the bills for recording these deeds?

A. Paid by Wright-Blodgett Co.

49. After Mr. Allen had made this commutation did he make any disposition of this land that you know of?

A. Yes, sir.

50. What?

A. He sold it to Wright-Blodgett Co.

51. How long after the commutation did he make this sale?

A. I don't remember. Not long; 30 or 40 days.

52. Who represented Wright-Blodgett Co. in this sale?

A. Dickens.

53. When Mr. Dickens agreed to advance the money for his commutation was any understanding entered into as to what disposition would be made of the lands after proof was made?

A. No, sir.

54. No understanding that they would be sold or not?

A. He had asked me the question before as whether or not we intended selling our land and I told him we were.

55. Was there any understanding or agreement between you and Dickens or the Wright-Blodgett Co. that after this commutation and issuance of final receipt that the land would be sold to the Wright-Blodgett Co.?

A. No, sir; there was not.

56. When this land of Mr. Allen's was sold to Wright-Blodgett Company who paid for it?

A. Wright-Blodgett Company.

57. Through whom?

A. Mr. Dickens. As well as I remember the check was sent to me covering the entire purchase for both tracts, and Mr. Allen had gotten money all along from me to live on, and so after I deducted the amount he was

indebted to me. I gave him my personal check for the difference. I don't remember how much it was.

58. Do you remember in this transaction whether or not the amount advanced by Mr. Dickens for this commutation was subtracted from the purchase price?

A. Yes, sir.

59. It was?

A. Yes, sir.

50. (60) In settling for these lands the Wright-Blodgett Company paid the consideration recited in the deed less the amounts advanced by Dickens for this commutation in both instances?

A. Yes, sir.

51. (61) In your case and his?

A. Yes, sir.

CASE NO. 154, BOYD'S ENTRY.

This entry was made January 13, 1900 (R., 32); commutation proof was offered May 18, 1901 (R., 37–43), and final certificate was issued May 24, 1901 (R., 45).

Witness Micheal Smith, who lived about 300 yards from the land, and knew the entryman "since he was a little boy" (R., 60), testified that Boyd lived at Cora, some 3½ miles from the land, and that he had never seen Boyd living on the land; that the improvements made on the homestead consisted of a small house and something like an acre fenced. The house was built *after* July, 1900. (R., 61.) There was no furniture in the

house; there were holes for windows, and no facilities for cooking. (R., 64.)

Witness J. D. Wilson, who had known Boyd since the latter was small (R., 74), testified that the only thing that he ever saw in the house was plows; that there was a little fence around an acre of land; he never saw anyone living at the place; that he visited it as frequently as once a month (R., 76), and he never saw any part of the land cultivated and had never seen any crop raised (R., 77).

The entryman himself, though he filed an answer denying the allegations of the bill, when called as a witness for the Government, testified that the house cost him about $20 or $25; that he had fenced something over an acre; that he visited the land once every three months and made a practice of staying about three days; that he kept cots for sleeping purposes; sometimes he left them there (R. 169); that his actual residence during the life of the entry was at his father's, about 3 miles from his homestead entry. The entryman testified that he sold the land to Nat Wasey, who "was supposed to be representing Wright-Blodgett Company"; that is, he supposed he sold to Wasey, and, when asked who was it that acted as agent for the company, he answered "Mr. Wasey," who lived about 12 miles from his place (R., 170).

Witness Smith testified that Wasey was in that neighborhood during the lifetime of the entry;

that that was about the time that he was there principally. (R., 62.) Witness Wilson also testified that Nat Wasey was in the neighborhood; he seemed to be in the land business. (R., 78.)

CASE NO. 155, AKIN'S ENTRY.

This entry was made May 4, 1899. (R., 28.) It embraced a quarter section of land in the same township as that mentioned above; that is, T. 2 N., R. 5 W., in Vernon Parish. Commutation proof was offered August 17, 1901 (R., 36-42), and final certificate was issued September 18 following (R., 44).

Witness A. A. Carruth testified that during the years 1899 to 1901 he lived about 2 miles from the land and had occasion to cross it frequently, sometimes every week, and during that time nobody ever lived there. The improvements consisted of a little log house, which was not furnished. (R., 79.) It had no stove, no cooking utensils. It had been built by a man named Burns. About half an acre had been cultivated and planted in peas *during the first year* of the entry, which, so far as witness knew, were never harvested. (R., 80.)

The entryman himself, when called as a witness for the Government, said that at the time he made the entry he was living at Lloyd, in Rapides Parish, about 35 miles from the homestead; that he was married at that time and had two children, who were living with him at Lloyd, and

that after making his entry he did not change his place of residence, but continued to live at Lloyd with his family (R., 183); that he would visit the place three or four times a year and would stay a day, sometimes two days. Improvements consisted of a house and field, a little log house of one room, no windows; that the furniture consisted of plow, tools, saw and hammer, and some cooking utensils; no household goods except a cot. (R., 184.) This witness testified further that he sold the land to one who claimed to be the agent of the Wright-Blodgett Company; that the agent who invited and conducted the negotiations of the sale was Mr. Nat Wasey; that he had seen Wasey before and knew about where he lived, 10 or 15 miles from the homestead (R., 186); that Wasey came to him or they met at the post office, where the sale was made, three or four miles from the land; that Wasey and the entryman went over the land together; that Wasey knew where he lived (R., 187). They "went over the whole homestead" (R., 188); Wasey was shown the improvements (R., 189).

> Q. Then Mr. Wasey did inquire what you had done in regard to complying with the homestead laws?
>
> A. Yes, sir. (R., 191.) * * * He asked me if I had ever done anything there, and I told him I put a house and had a field there and showed it to him.
>
> Q. What did you tell him?

A. I told him that I had built a house and had a field there.

Q. Did you tell him how long you had lived there?

A. No, sir. He did not ask me. (R., 194.)

This witness also testified as follows:

Q. Then, when he bought this land, from his own inquiries he learned that you were living with your wife and children 35 miles from the homestead?

(Objected to by counsel for defendant on the ground that it calls for the knowledge of Wasey from this witness.)

Q. You told Wasey that when you made the sale?

A. Yes, sir. (R., 191.)

He afterwards qualified or corrected the testimony by explaining that Wasey's question and the answer to it had reference to the witness's post office at the time of the negotiations. The post office, or at least witness's home, which must have been close to it, as we have seen, was 35 miles away. Wasey was a witness to the deed to the appellant executed by the entryman only 10 days after the issuance of the final certificate. (R., 24.) Taking the testimony on the subject as a whole (including that given by the witnesses, Wilson, R., 65; Charlles M. Ingalls, R., 67; F. M. Ingalls, R., 64; and that of the entryman and the witness, Carruth, to which we have already referred), there can be little doubt that the so-called improvements constituted the veriest pretense of compliance with

the homestead law. We will not attempt to review the testimony at length, but will invite the attention of the court to it. Knowing the recency of the final proof when the purchase was negotiated, knowing the remoteness of the entryman's home, and observing the ocular proof that the residence and cultivation were a sham, Wasey, the agent of the company, who solicited the purchase and conducted the whole transaction in its behalf, was put upon clear notice of the fraudulent character of the entry. At least it would not do to say that this record affords no evidence to support the finding of the courts below in that regard.

CASE NO. 156, BRYERS' ENTRY.

This entry was made January 31, 1900. (R., 39.) It embraced 75.655 acres in the township adjoining that in which the four other entries were made. Commutation proof was offered August 17, 1901 (R., 46–51), and final certificate was issued September 18, following (R., 54). A deed from the entryman to the appellant was executed September 28, 1901, Nat Wasey being a witness to the instrument. (R., 33.)

Witness F. M. Ingalls, for the Government, testified that during the life of the entry Bryers lived with a Mr. Smith, some *four miles from the land.* (R., 72.)

The entryman himself testified that the improvements consisted of a plank house about 12 feet square and a little crib, with about an acre

and a half of cleared land. The house had no doors or windows. (R., 61.) He was working at Mr. Smith's and living there, and during that time he would go up and "stay on it some. I couldn't stay on it all the time." (R., 64.) Smith's residence was some four miles from the homestead. When asked how the house was furnished, he answered, "Why, I just taken my things up there."

Q. What things did you take?

A. My quilts to sleep on and stay on the land.

Q. What other furniture, if any, was in the house except your quilts?

A. I never had anything else.

Q. What cooking arrangements did you have?

A. None; I carried my grub with me.

Q. How often during the 20 months that you say passed between the time of your entry and the time of your commutation proof did you stay all night on that land?

A. I reckon I made an average of staying on it about one night out of the month. (R., 64–65.)

This witness testified that the money to commute the entry was furnished by Nat Wasey. He did not know how much it was. He said he sold the land to Nat Wasey.

Q. How do you know anything about what was paid for your land; did somebody tell you about it?

A. What was paid?

Q. Yes. You made the proof at two and a half an acre?

A. Yes. Why, I do not know what it was. I didn't know how much. Nobody didn't tell me.

Q. Were you working for Michael Smith at the time?

A. Yes, sir.

Q. You were making money, wasn't you?

A. Yes, sir.

Q. How much money?

A. I do not know now. I believe $1 a day he was giving me.

Q. And your board?

A. Yes, sir.

Q. Had you saved up any money?

A. No; I had not saved up none. (R., 67-68.)

This witness further testified as follows:

11. Did you have any agreement or understanding with Wazey as to the advancement of this money?

A. To be sure.

12. What was that agreement or understanding?

A. For me to let him have the land.

13. Did you comply with your part of that agreement by selling him the land after commuting it?

A. Yes, sir.

14. Do you know whether the land was sold to him personally or to some company he represented?

A. Must have been to a company.

* * * * *

24. Was not Wazey present when you made your proofs?

A. No, sir; I don't believe he was. He was there, but not when I made my proofs.

25. It was before you made proofs that you had this understanding with him?

A. Yes, sir. (R., 160–161.)

On cross-examination this witness was asked:

10. When you get your final receipt you could have sold the land to anybody you wanted?

A. Yes, sir—no, I couldn't, either, 'cause I'd promised to sell it to him. (R., 163.)

* * * * *

37. What promises did you make to him?

A. I would let him have the land.

38. When was it you made him that promise?

A. It was the same day I made my proof.

39. Was it before or after your (you) made your proof?

A. It was before I made my proof.

40. How long before?

A. The same day. (R., 165.)

* * * * *

56. How do you happen to be so certain that you made this agreement with Wazey the same day you made your commutation proof?

A. Of course I recollect that because I didn't have any money to make my proof

and he furnished me the money. That is how I remember; I didn't have the money.

57. Did he give you any money personally?

A. No, sir.

58. Who made your proof for you?

A. Jim Boyd.

59. How do you know Nat Wazey ever furnished any money?

A. I am not certain, of course. I don't know for certain. I think he did. I did not aim to beat the Government out of anything. I don't want to beat anybody.

60. You don't know for certain that he ever furnished any money or not?

A. Yes; he furnished the money.

61. How do you know?

A. Well, he promised it to me. (R., 166.)

A rather savage attack upon the testimony of this witness is made in the brief of the learned counsel for appellant (pp. 48 et seq.), who draws upon his imagination, or some other source *dehors* the record, in order that the court may derive the more vivid a picture of the witness' supposed terror and unreliability. We do not believe that the truth is helped by the manner in which counsel have treated the subject. We feel that a careful perusal of Bryers' entire testimony will convince that, taken in connection with the failure of the appellant to produce any answering evidence of its own, there was in it quite enough to sustain the decree in this case. The testimony shows conclu-

sively that the witness was an utterly illiterate man (he could not read, or even sign his own name to the deposition), devoid of property or pecuniary means; that his employer furnished him the lumber for his hut; that Boyd, the commissioner, suggested that he commute his entry and that *somebody* must have put up the money to do it with. That *somebody* could have been none other than Wasey, who was present or near when the proof occurred and shortly afterwards paid the entryman his share and witnessed the deed to the appellant. The contradictions to which counsel calls attention are of no special significance when due allowance is made for the evident fact that the witness was flustered (doubtless by the violent objections and fierce demeanor of the learned counsel himself) and, for that reason, and because of his ignorance, did not clearly apprehend some of the questions or express himself exactly in some of his replies.

On page 63 of the record, where he indicates that nothing was said or promised about the money, he clearly refers to the money paid the register, which he did not see or handle (R., 63, 67)—the money which "they" furnished (R., 62). On the second examination he recalls that Wasey promised this before the commutation. The statements (R., 64, 162) that he did not *sell* till after final receipt, of which so much is made by counsel, evidently refer to the deed and not the agreement. Counsel is in error in quoting this witness as say-

ing that the special agent assured him he "need not be worried any more about the indictment." What the witness actually testified was that the agent said nothing about the indictment (R., 65), though counsel attempted to put the other words in his mouth at the second examination (R., 165).

The question whether this witness's testimony should be rejected because of Wasey's death is one about which opinions of different minds might honestly differ, but surely the testimony was sufficient to cast upon the appellant the onus of doing what it could by way of contradiction. It could have called Kelly, or some other official, to explain how the money (which evidently was the company's) was paid, or at least what instructions Wasey had regarding the use of money in such cases. As this was not even attempted, we submit that there was ample justification for the finding of the two courts below concerning the entry.

Legal effect of the evidence considered.

There can be no serious question that all five entries were illegal for want of compliance with the statutory requirements concerning residence and cultivation.

The entries made by Hicks and Allen and Bryers were also fraudulent, in that before commutation proofs were made there was an agreement or understanding that the lands would be sold to the defendant company which furnished the money used to

pay the Government for the land. Counsel contend that an agreement made prior to the submission of commutation proof is not forbidden by the homestead laws, but discussion of this question is foreclosed by the decisions of this court in *Bailey* v. *Sanders* (228 U. S., 603), and *Gilson* v. *United States* (234 U. S., 380).

In the Hicks case not only Wasey, but Dickens, the agent who made the purchase, was clearly on notice that Hicks could not comply with the residence provision. It was actual notice. And, as the Hicks transaction was handled jointly with the Allen transaction, Hicks acting for Allen (his brother-in-law) as well as for himself, the duty to inquire concerning Allen is also evident. Both of these entries were infected by prior agreements, and it hardly lies with the appellant, which brought the entries about and procured the illegal issuance of patents in that unlawful and fraudulent way, to defend upon the ground that it did not know anything, and did not inquire, concerning the residence and cultivation.

As for the entry of Boyd (No. 154), while there is no proof of a prior agreement, there is strong evidence (Smith, R., 60; Wilson, 74) showing the sorry character of the improvements and cultivation, as well as the lack of residence, which Boyd's own testimony makes plain. If Wasey went over this land, it is fair to assume that he must have seen and noticed the evidence of want of cultiva-

tion and want of habitancy. The general proof concerning his functions warrants the belief that he did go over it, in the absence of contrary explanation coming from the appellant. The witnesses say Wasey was in that vicinity. Boyd says Wasey was on the section, though he could not say he was on the very land in controversy. (R., 171.)

Regarding the entry made by Akin and the appellant's notice through Wasey of Akin's nonresidence and of the true nature of the so-called improvements, we need not repeat what is said above in the general discussion of the evidence.

In Bryers's case there was, as we have seen, sufficient proof of a prior agreement.

In weighing all this evidence it must not be overlooked that:

III.

The Government having, with the requisite certainty, established that the entries were fraudulent, the onus was upon the appellant to make good its plea of bona fide purchase without notice.

In support of this proposition it is enough to call attention to the following cases and the authorities therein cited:

Boone v. *Chiles*, 10 Pet., 177, 211.
United States v. *Brannan* (C. C. A.), 217 Fed., 849.
United States v. *Hill*, 217 Fed., 841.

It is true that the language of the opinion in the *Clark case* (200 U. S., 601) is against us here, but the point seems not to have been raised in that case, and we do not think the opinion should be taken as overruling *Boone* v. *Chiles, supra.* Clark not only pleaded his good faith but gave evidence to support the plea. Here the defendant made no such attempt. It did not call its officer Kelly, under whom Wasey worked, nor did it call any other witness except Moss, who passed on the abstracts of title only. It did not reveal how its moneys were used, or what the authority and functions of its agents were.

We respectfully suggest the absence of any reason why the rule announced so clearly in *Boone* v. *Chiles* should be abandoned in a case of this character. We concede that one who purchases on the faith of a patent, or possibly a mere register's certificate, may rely upon it and is not bound to enquire behind it, but this is no reason why it should be *assumed* that he purchased in that way. He should at least be required to prove that he relied on the patent or certificate and supplement this by a denial of any knowledge or notice of the fraud. And when, as in this case, facts tending to prove such notice are adduced by the Government, he should not be permitted, in a court of conscience, to sit mute, upon the theory that it is for the Government to prove beyond a reasonable doubt the content of his own secret knowledge.

That the burden is upon the Government to make out the fraud by strong proof is conceded. A similar burden rests upon everyone who attacks a conveyance for fraud. But the reasons for this rule do not extend to the issue of *bona fide* purchase in either case.

Bona fide purchasers, when truly such, are rightly the favored of equity. This ground of defense, however, is one that lends itself with peculiar facility to collusion and fraud. Only by constant insistence upon diligent inquiry may the equities of defrauded owners be protected, and only by demanding the greatest particularity of proof upon the part of purchasers may the impostors be distinguished from the worthy. It is no hardship to exact of a purchaser that he shall have been careful to follow up all clews to wrongdoing that came to his notice before he bought, and that afterwards he shall stand ready to allege and prove with fullness and particularity all that he did and all that he knew about the title. In the performance of these duties the defendant has failed most signally.

Kelly had general supervision of the appellant's Louisiana affairs from their beginning through the time when these purchases were made. He controlled Wasey and operated with him. (R., No. 151, 94–96.) Dickens also was one of his subordinates. If Kelly had been called to the stand and had testified that it was Wasey's duty to examine

into the appearance of the homestead improvements (as he actually did in at least one of these cases), and *a fortiori* if he had testified that this was actually done in these cases, no one would question the adequacy of the notice in all of them. Surely it was not incumbent on the Government to call Kelly and make him its own witness. The appellant should have called him, and, it having failed to do so, the presumption is that the testimony would have been adverse to the defense.

IV.

The evidence of the unlawful prior agreements was competent.

1. It tended to support the allegation that the company, through officers unknown to the plaintiff, aided, assisted, advised, and encouraged every illegal act charged in the bills.

2. It estopped the appellant from claiming to have purchased in good faith the lands which it agreed to purchase, fraudulently, before the final proofs.

3. The gravamen of the cause of action in each case was that the patents were fraudulently procured in violation of the homestead law. The fact that the law was violated in a way not expressly charged did not add a new cause of action. (*United States* v. *California and Oregon Land Co.*, 192 U. S., 355.) The bills could properly have been amended

to conform to the proof, and in the interest of justice such an amendment may be regarded as made in the appellate court.

Jones v. *Meehan,* 175 U. S., 1, 29.
Neale v. *Neales,* 9 Wall., 1.

CONCLUSION.

The decrees of the court below should be affirmed.

Respectfully submitted.

ERNEST KNAEBEL,
Assistant Attorney General.
S. W. WILLIAMS,
Attorney in Department of Justice.

JANUARY, 1915.

○

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 156

WRIGHT-BLODGETT COMPANY, LIMITED,

(Bryers Case.)

versus

THE UNITED STATES OF AMERICA.

J. BLANC MONROE,
MONTE M. LEMANN,
A. R. MITCHELL,
Solicitors for Defendants.

December, 1914.

E. P. ANDREE PTG. CO., BRIEF PRINTERS, 516 NATCHEZ ST.

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TABLE OF CASES.

Supreme Court of the United States

OCTOBER TERM, 1914.

No. 166.

WRIGHT-BLODGETT COMPANY, LIMITED,

(Bryers Case.)

versus

THE UNITED STATES OF AMERICA.

SYLLABUS.

1. When the United States brings a suit to annul a patent to land held by a vendee of the entryman, on the ground of fraud in the entryman it must prove actual notice of such fraud in said vendee.

   200 U. S., 601, United States v. Clark.
   200 U. S., 321, U. S. v. Detroit Lumber Co.

2. When the United States seeks to annul a patent on grounds of fraud in the entryman and notice in his vendee, the specific details of the fraud and of the notice must be set out in the bill, and the probata must conform to the allegata.

121 U. S., 325, Maxwell Land Grant Case.
172 Fed., 950, U.S. v. Barber Lumber Co.
174 U. S., 981, Kennedy v. Custer.

See other authorities page 17, infra.

3. It will not do for the United States to allege in its bill that the entryman was in fraud because he did not live on the land and when the case comes on for trial attempt to show that the entryman is in fraud because he sold his land before making his final proof.

4. When seeking to annul a patent under the seal and signature of the President, the United States to succeed must adduce that class of evidence which commands respect and that amount which produces conviction. A patent cannot be set aside upon a bare preponderance of evidence which leaves the issue in doubt.

121 U. S., 381, Maxwell Land Grant Case.
123 U. S., 307, Colorado Coal Co. v. U. S., 133 U. S., 193.
197 U. S., 200, U. S. v. Stinson.

5. The officials of the land office of the United States are affirmatively charged with the duty of investigating land entries and of ascertaining before issuing either a final receipt or patent, that the law is fully complied with. The purchaser from a person holding a final receipt is charged with no such duty. On the contrary, he is entitled to buy on the faith of the patent and receipt and without

looking for grounds of doubt. If the bill shows that the entryman's actions, settlement and proof deceived the trained sleuths of the Government land department, and that they issued both final receipt and patent, a strong presumption arises that the entryman's vendee was likewise deceived.

6. General statements that representatives of the defendant were in the general neighborhood at the time of the purchase are not sufficient to overcome this presumption particularly so when the improvements placed upon the land were such as to create in the casual observer the belief that the law was fully complied with.

121 U. S., 381, Maxwell Land Grant Case, etc.
200 U. S., 601, Clark Case.

7. Nor will such general statements prevail when the record shows that defendants were in the habit of buying land on a general cruisers estimate without special examination and that they purchased the particular land in controversy on the advice of counsel of high standing after examination of the abstract of title thereto.

8. As U. S. R. S. 2301 does not require one commuting a homestead entry to prove that he has not agreed to alienate the land, this Court will not write such a requirement into that Statute.

207 U. S., 455, Williamson v. U. S.
211 U. S., 507, U. S. v. Biggs.
193 U. S., 510, Adams v. Church.
211 U. S., 525, U. S. v. Sullenberger.
211 U. S., 523, U. S. v. Freeman.

STATEMENT.

This is a suit by the United States Government to annul a land patent on the ground that the homestead entryman defrauded the Government, in that he did not reside upon, improve and cultivate his land, as required by the homestead laws. **THE CHARGE OF FRAUD IS STRICTLY CONFINED TO THE FAILURE TO RESIDE UPON, IMPROVE AND CULTIVATE.** (R., p. 6.) The homestead entryman, Samuel E. Bryers, is made defendant and with him is joined the Wright-Blodgett Company, Limited, the present owner of the land. The bill avers (R., pp. 5 and 9) and it is a fact that the latter acquired the land **after** the issuance to the homesteader of **his final receipt.** The bill then proceeds to charge that the Wright-Blodgett Company, Limited, had knowledge of the fraud in the entryman through its agents Boyd and Wasey.

The Wright-Blodgett Company, Limited, in its answer sets up that it purchased the land in good faith for value after the issuance to the entryman of his **final receipt;** that if the entryman was in fraud it knew nothing of the fraud, but was deceived, just as the bill recites (R. p. 7) that the trained and skilled experts of the Land Department were deceived, when, after examining the matter which they must have done **after the Wright-Blodgett Company, Limited,** bought and recorded its purchase, they issued the patent. It points out that the fact that the United States officials had accepted the commutation

and other proofs of Bryers and had issued a final receipt to him, was sufficient to justify it in concluding that the homestead law was complied with. This Court has in terms held that "it was not bound to look for grounds for doubt." **Clark case; Detroit Lumber Case, 200 U. S.** It stands flatly on the fact that it purchased in good faith for value, after issuance of the final receipt. It denies that its title, acquired under such circumstances, can be in any wise affected by fraud or misfeasance on the part of the entryman. The case was confined strictly to the issues made by the pleadings. This appears from record, page 59, where the following agreement of counsel is produced:

> "It is agreed by counsel for complainant and respondent that the testimony taken at this hearing is taken with full reservation of the right of either party to make any and all objections to same on any and all grounds at the time that the testimony, after being written up, is offered in open Court at the final hearing of the case, and there being no necessity for the noting of said objections as the testimony is taken."

And from record, page 19, where the following objections of the Wright-Blodgett Company, Limited, appear:

> "Now comes the Wright-Blodgett Company, Limited, co-defendant herein, and suggests that it was agreed at the taking of the testimony herein that all objections might be made to same at the time of argument.
>
> "**Wherefore,** it now objects to the following testimony and evidence, and moves to strike out same:

"1. Respondent reiterates all and singly the objections specially noted by it during the hearing, and asks that the testimony objected to be striken out.

"2. The bills having charged that the Wright-Blodgett Company Limited, had knowledge of the fraud charged through a certain individual, or individuals, specifically naming them, defendants object to any attempt to show such knowledge by other individuals on the ground of variance and irrelevancy, and asks that same be striken out.

"3. **THERE IS NO ALLEGATION IN THE BILLS CHARGING INVALIDITY IN THE ENTRIES ON THE GROUND THAT THE ENTRYMAN SOLD OR AGREED TO SELL, PRIOR TO MAKING FINAL PROOFS, HENCE ANY ATTEMPT TO SHOW SUCH A SITUATION WOULD BE IRRELEVANT AND A VARIANCE, AND IS OBJECTED TO AS SUCH, AND A MOTION MADE TO STRIKE SAME OUT.**

"4. The entire testimony of A. G. Winfree and A. N. Mayo is objected to as hearsay and opinion evidence, and the entire testimony of H. H. Rock, is objected to as irrelevant, and motion made to strike same out.

"It appearing that there are filed herein certain letters passing between the department of the government and officials thereof and certain reports of special agents, and same are objected to by the Wright-Blodgett Company, Limited, on the ground:

"1. As not the best evidence and hearsay.

"2. As unsworn statments of persons not sworn as witnesses.

"3. As **res inter alios acta**, irrelevant and immaterial."

See, also, objections at R., pp. 61, 62, 63, 64.

The recent decisions of this tribunal leave no room for doubt as to the correctness of the appellants' contentions that the title of a purchaser in good faith, buying on the faith of a final receipt, is not affected by fraud in the entryman. These decisions are as follows:

200 U. S., 601, United States v. Clark:

The facts in the case are thus stated by Mr. Justice Holmes, p. 606:

> "This is a bill for the cancellation of eighty patents for timber lands in Montana now owned by the defendant on the ground that the patentees did not purchase the same in good faith for their own exclusive use and benefit, but for speculation and under agreement by which their title should inure to the benefit of another and that defendant knew all the facts in a general way, if not in detail. Act of June 3, 1878, c. 151, par. 2, 20 Stat. 89; extended to all public land States by Act of August 4, 1892, c. 375, sec. 2, 27 Stat. 348. The defendant pleaded that he was a **bona fide** purchaser, excepted as such from the invalidation of the patents by the act, and denied the material allegations of the bill. Voluminous evidence was taken, and at the hearing the bill was dismissed by the Circuit Court. **125 Fed. Rep., 774.** That court found that Clark had no actual knowledge of the alleged frauds or of facts sufficient to put him on inquiry (**125 Fed. Rep., 776, 777**), and con-

sidering the requirement of clear proof according to the statement of this court in the Maxwell Land Grant case, 121 U. S., 325, 381, further was of opinion that the original frauds alleged were not made out. The Circuit Court of Appeals, in view of the pendency of indictments, did not discuss the alleged original frauds, **but assuming for the purpose of decision that they had been committed, confirmed the findings of the Circuit Court with regard to Clark.** One Judge dissented on the ground that Clark knew enough to be put upon inquiry. **138 Fed. Rep., 294.** The United States then appealed to this Court.

"The bill proceeds upon the footing that Clark has the legal title to the lands in question. The entrymen conveyed to one Cobban, the alleged partner in their frauds, and Cobban conveyed to Clark, all by warranty deeds. **IT IS TRUE THAT THEY CONVEYED BEFORE THE PATENTS ISSUED SHORTLY AFTER OBTAINING THE RECEIVER'S RECEIPT,** but it is assumed that the legal title, when created, followed the deeds. We make the same assumption. **Landes v. Brant, 10 How., 348; Bush v. Cooper, 18 How. 82; Myers v. Croft, 13 Wall., 291; United States v. Detroit Timber and Lumber Co., 200 U. S., 322.** See, further, **Ayer v. Philadelphia and Boston Face Brick Co., 159 Massachusetts, 84.** But the position is that Clark is privy to the original frauds, and that, even if he is not, inasmuch **AS HE DID NOT PURCHASE ON THE FAITH OF THE PATENTS,** he has no better title than the entrymen would have had if the title had remained in them. No distinction is attempted on the ground that the deeds as well as the bargain preceded the patents.

"**WE MAY ASSUME** for the purposes of decision as did the Circuit Court of Appeals, **THAT THE ORIGINAL FRAUDS ARE MADE OUT,** although there is a great amount of testimony in good faith. But the point of law just stated has been disposed of by **United States v. Detroit Timber and Lumber Co., 200 U. S., 321.** The United States is attempting to upset a legal title. **IN ORDER TO DO THAT IT MUST CHARGE CLARK WITH NOTICE OF THE ORIGINAL FRAUDS.** The fact that Clark, while he had a merely equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew it or not, as generally is the case with regard to assigned contracts not negotiable, was not equivalent **TO ACTUAL NOTICE OF THE DEFECT.** It is recognized in the act of March 3, 1891, c. 561, sec. 7, 26 Stat. 1095, 1098, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE ACTUAL NOTICE MUST BE PROVED.**

* * * * * * * * *

"* * * There is nothing sufficient to show that Clark had actual knowledge of the arrangement by which Cobban got the lands. The allegation that Cobban was Clark's agent in the purchase wholly breaks down. Clark was at a distance. He dealt as a purchaser with Cobban, and paid him the market price, and a substantial profit even on the Government's calculation. **SO FAR AS ANY INFERENCE WAS TO BE DRAWN FROM THE NEARNESS OF THE RESPECTIVE DATES OF THE RECEIVER'S RECEIPTS,**

THE DEEDS OF THE ENTRYMEN TO COBBAN AND THE DEEDS OF COBBAN TO CLARK, IT WAS AS OPEN TO THE OFFICERS OF THE GOVERNMENT AS TO CLARK, IF INDEED HE KNEW ANYTHING ABOUT THOSE DATES, YET THEY SEEM TO HAVE SUSPECTED NOTHING, AND HE WAS ADVISED BY REPUTABLE COUNSEL THAT THE TITLES WERE GOOD, AND BOUGHT ONLY ON HIS ADVICE. * * * IT IS ARGUED, FURTHER, THAT CLARK'S INSPECTOR MUST HAVE GONE UPON THE LAND ABOUT THE TIME OF THE ENTRIES IN ORDER TO DO THE NECESSARY WORK OF ESTIMATING THE TIMBER. IF, FOR THE PURPOSE OF ARGUMENT, WE ASSUME THAT KNOWLEDGE OF A TIMBER INSPECTOR OF FACTS AFFECTING THE TITLE, WITH WHICH HE HAD NOTHING TO DO, WAS CHARGEABLE TO CLARK, STILL THE KNOWLEDGE IS A MERE GUESS. THERE WAS NOTHING PRESENT OR REQUIRED TO BE PRESENT ON THE FACE OF THE EARTH TO INDICATE WHEN THE ENTRY TOOK PLACE. WE CANNOT INFER FRAUD MERELY FROM MORE OR LESS FAMILIAR RELATIONS BETWEEN SOME OF CLARK'S AGENTS AND COBBAN. When suspicion is suggested it easily is entertained. But, bearing in mind, as was said in **United States v. Detroit Timber and Lumber Co., supra**, that **CLARK WAS NOT BOUND TO HUNT FOR GROUNDS OF DOUBT**, and recurring to the canons of proof laid down by the decisions of the Courts below, we are of opinion that a decree dismissing the bill must be affirmed."

200 U. S., 321, U. S. v. Detroit Lumber Co.:

The facts in this case are stated in the opinion as follows:

> "The bill was filed on April 5, 1902, by the United States against the Detroit Timber and Lumber Company, the Martin-Alexander Lumber Company and a number of individual defendants. The object of the bill was to set aside patents to forty-four tracts of land issued to the individual defendants and all conveyances, contracts and leases from them purporting to convey title to or a right to cut and remove timber from the lands, and also for an accounting of the timber cut and removed from the land by the two companies, and judgment therefor.
>
> "The charge was that the lands were entered under the Timber Act of June 3, 1878, 20 Stat., 89, and in fraud of its provisions, in that the purchase money was advanced by the Martin-Alexander Company, under contracts with the entrymen that they should convey to it all the standing timber therein. The Martin-Alexander Company denied that there were any such contracts, and the Detroit Company in addition pleaded that it was a **bona fide** purchaser from the former company."

The Court held, page 329, **that the entrymen were in fraud.** The sole questions then left was the good faith **vel non** of the then holders and the validity of that good faith as a defense. The Court found the defendants purchasers in good faith, using the following language:

> "In their brief counsel for the Government say:
>
> "'We claim that the law as laid down in **Haw-**

ley v. Dillon, that one who takes title before the issuance of patent, cannot claim to be a **bona fide** purchaser, made it the duty of the Detroit Company to make the most searching inquiry at least as to all of the timber contracts except the thirteen for which patents to the land had issued.'

"We do not understand the law to be as stated, or that one who enters into an ordinary and reasonable contract for the purchase of property from another is bound to presume that **THE VENDOR IS A WRONGDOER, AND THAT, THEREFORE, HE MUST MAKE A SEARCHING INQUIRY AS TO THE VALIDITY OF HIS CLAIM TO THE PROPERTY.** The rule of law in respect to purchases of land or timber is the same as that which rules in other commercial transactions, and such a rule as is claimed by counsel would shake the foundations of commercial business. No one is bound to assume that the party with whom he deals is a wrongdoer, and if he presents property, the title to which is apparently valid, and there are no circumstances disclosed which cast suspicion upon the title, he may rightfully deal with him, and, paying full value for the same, acquire the rights of a purchaser in good faith. **Jones v. Simpson, 116 U. S., 609, 615. He is not bound to make a searching examination of all the account books of the vendor, nor to hunt for something to cast a suspicion upon the integrity of the title.** * * *

"In the light of these authorities we see nothing which casts any imputation on the conduct of the Detroit Company, or that tends to show that it was not a purchaser in absolute good faith.

"Now, what is the law controlling under these circumstances? Much reliance is placed by the

Government on **Hawley v. Diller, 178 U. S., 476,** which, affirming prior cases, holds that an entryman under the Timber Act acquires only an equity, and that a purchaser from him cannot be regarded as a **bona fide** purchaser within the meaning of the act. * * *

"* * * It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman and will in due course issue to him a patent. He is the equitable owner of the land. It becomes subject to state taxation, and under the control of State laws in respect to conveyances, inheritances, etc. **Carroll v. Safford, 3 How., 441; Witherspoon v. Duncan, 4 Wall. 210; Simmons v. Wagner, supra; Winona and St. Peter Land Co. v. Minnesota, 159 U. S., 526; Cornelius v Kessel, 128 U. S., 456; Hastings & Dakota R R. Co. v. Whitney, 132 U. S., 357; Benson Mining Co. v. Alta Mining Co., 145 U. S. 428.**

"Indeed, in some of the opinions of this Court, emphasizing the value of a receiver's receipt, there are expressions which seems to underestimate the significance of a patent. Wisconsin Central R. R. Co. v. Price County, 133 U. S., 496, 510; Deseret Salt Co. v. Tarpey, 142 U. S., 241, 251. * * *

197 U. S., 200, United States v. Stinson:

"The Government, like an individual, may maintain any appropriate action to set aside its grants and recover property of which it has been

defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, **yet the respect due to a patent, the presumption that all preceding steps were observed** before its issue, and **the necessity of the stability of titles** depending on official instruments **demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.**

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumptions of law and fact, and **it is a good defense that the title has passed to a bona fide purchaser for value without notice.** Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties. * * *

"**United States v. Burlington & Missouri River R. R. Co., 98 U. S., 334, 342; Colorado Coal Co. v. United States, supra,** p. 313—a case in which, as here, suit was brought to set aside land patents on the ground that they had been obtained by fraud, and in which we said:

" 'But it is not such a fraud as prevents the passing of the legal title by the patents. It follows that to a bill in equity to cancel the patents upon these grounds alone **the defense of a bona fide purchaser for value without notice is perfect.' United States v. Marshall Mining Co., 129 U. S., 579, 589; United States v. California, Etc., Land Co., 148 U. S., 3, 41; United States v. Winona, Etc., Railroad Co., 165 U. S., 463, 479.**"

RESUME.

To resume, we conceive that the law applicable to this case is that laid down by Mr. Justice Holmes in the **Clark case** in these words:

> "The United States is attempting to upset a legal title. In order to do so, it must charge Clark (the Wright-Blodgett Co.) with notice of the original fraud." "The fact that Clark (W. B. Co.), while it had merely an equitable or personal claim against the Government, held it subject to any defect which it might have, whether he knew of it or not, as generally is the case with regard to assigned contracts not negotiable was not equivalent to **actual notice of the defect.** It is recognized in the act of March 3, 1891, that there may be a **bona fide** purchaser before a patent issues. The title when conveyed related back to the date of the original entries. **THEREFORE, ACTUAL NOTICE MUST BE PROVED.**"

With the law and the pleadings in this condition, it was manifestly incumbent upon the Government, as complainant in the suit, to prove **THAT FRAUD WHICH IT HAD ALLEGED IN THE BILL AND NO OTHER FRAUD.** Any attempt to prove any other fraud would have been and was inadmissible under the pleadings and objections. So also was any attempt to prove knowledge in the Wright-Blodgett Company, Limited, through any persons other than those named. In support of these contentions we wish to direct the Court's attention to the following authorities.

121 U. S., 325, Maxwell Land Grant Case:

This was a suit by the United States to annul a grant of land. This Court said:

> "Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside should be successful **only when the allegations on which this attempt is made are clearly stated and fully proved.** In this case the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the Circuit Court dismissing it is affirmed."

172 Fed., 950, United States v. Barber Lumber Company:

This was a suit by the United States to annul a patent for alleged fraud. The syllabus reads:

> "In a suit of this character the bill must show specifically and in detail what the fraud consists of and how it was effected, and although the complainant may make out a case which under the circumstances would entitle it to the aid of the Court, yet if it is not the case made out in the bill it cannot recover."

102 U. S., 372, United States v. Atherton:

> "A bill in chancery to set aside a judgment or decree of a Court of competent jurisdiction, on the

ground of fraud, must set out distinctly the particulars of the fraud, the names of the parties who were engaged in it, and the manner in which the Court or the party injured was misled or imposed upon.

"A bill to set aside or annul a patent of the United States for public lands or to correct it, on account of fraud or mistake, must show by like averments the particulars of the fraud and the character of the mistake and how it occurred."

Harrison v. Nixon, 9 Peters, 503:

"Every bill must contain in itself sufficient matters of fact, **per se**, to maintain the case of the plaintiff, so that the same may be put in issue by the answer and established by the proofs. The proofs must be according to the allegations of the parties, and if the proofs go to matters not within the allegations, the Court cannot judicially act upon them, as the ground for its decision, if the pleadings do not put them in contestation, the 'allegata' and the 'probata' must reciprocally meet and conform to each other."

Boone v. Childs, 10 Peters, 209:

"A party is not allowed to state one case in a bill or answer and make out a different one by proof; the 'allegata' and 'probata' must agree; the latter must support the former."

Byers v. Swiget, 19 Howard, 309:

"It is undoubtedly the rule in equity, as well as at law, that the proofs must correspond with the allegations, and that evidence irrelevant and inapplicable to the latter will be regarded as immaterial."

Rubber Co. v. Goodyear, 9 Wallace, 793:

> "The proposition that the patent is fatally defective because it is impossible to make merchantable goods according to the instructions contained in the specifications, cannot be entertained. The answer contains no averment upon the subject. No such issue was tendered to the complainants and they have had no notice that such a defense was intended to be relied upon.
>
> "In equity, the proof and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing as such allegations would be without the proofs requisite to support them."

United States v. Tichenor, 12 Fed., 425:

> "In the bill it is alleged that the patent was fraudulently obtained by means of false proofs, but of what the fraud consists, or wherein the proof was false, is not stated. Such an allegation is not sufficient on demurrer. The bill should have gone further and set forth the substance, at least, of the acts constituting the fraud, or stated wherein the proof was false."

Phelps v. Elliott, 35 Fed., 461:

> "The rule is fundamental in equity pleading that every fact essential to the complainant's title to maintain the bill and obtain the relief, must be stated in he bill. Otherwise the defect will be fatal. In the language of the Court in **Harrison v. Nixon, 9 Pet., 483, at page 503**: 'Every bill must contain in itself a sufficient matter of fact **per se** to maintain the case of the plaintiff. The

proofs must be according to the allegations of the parties, and if the proof go to matter not within the allegations, the Court cannot judicially act upon them as a ground for decision if the pleadings do not put them in contestation.' The 'allegata' and 'probata' must specifically meet and conform to each other, and it can no more succeed upon a case proved, but not alleged, than upon a case alleged but not proved * * * a decree must be sustained by the allegations of the parties, as well as the proofs in the cause, and cannot be founded on a fact not put in issue in the pleadings."

Platt v. Battier, 34 U. S., (9 Peters) 405:

"Where a bill is filed to compel the conveyance of legal title to certain land, and the statute of limitations is relied upon by defendant and no disability is alleged by complainant in his bill to take the case out of the statute, the question of disability, not being put in issue by the pleadings, the Court can consider evidence tending to show such disability."

Blandy v. Griffith, Fed. Cases, No. 10,529:

"The rule is well settled in equity that every material fact on either side must be set up in the pleadings, and, that the Court can no more consider what is proved, but not alleged, than what is alleged, but not proved."

Grosvenor v. Dassiell, 25 U. S. App., 227, 27 L. R. A., 67:

"A Court of equity will not grant a decree on another ground, where the bill charges actual

fraud as the ground for relief, and the fraud is not proven.

Eyre v. Patter, 56 U. S., 42 (15 Howard):

"A bill in equity charging actual fraud is not maintained by evidence of constructive fraud."

98 U. S., 69, United States v. Throckmorton:

This was a bill in chancery brought by the United States Government to set aside a patent for lands. Dealing with the question of notice of an alleged fraud, the Court said:

"The substance of it is that Howard, one of the present defendants, then the law agent of the Government before the board, had from the papers in some other suit, derived notice of the fraudulent character of the Micheltorena grant, and that he failed and neglected to inform the commissioners of the fact, or otherwise to defend the interest of the United States in the matter. If there had been a further allegation that Howard was then interested in the Richardson claim, or that Richardson had bribed him, or that from any corrupt motive he had betrayed the interest of the Government, the case would have come within the rule which authorizes relief; but nothing of the kind is alleged and the statement is a mere charge of carelessness or negligence on the part of the attorney for the Government, which would not have supported a motion for a new trial in a case of twenty years after it had been rendered.

"Nor is there any such clear statement of the notice which Howard had as is necessary to establish his negligence."

Although the foregoing authorities seem to leave no doubt of its obligation so to do, complainant made no serious attempt to prove up its case as alleged in its bill, and made no serious attempt to show that either J. M. Boyd or Nat Wasey was ever on the land in dispute, or knew whether the entryman had complied with the law. Of this more infra.

Moreover, we believe that the Government failed to show any fraud in the entryman. The entry was made under the provisions of Sections 2289, 2290 and 2301 of the United States Revised Statutes, which sections read as follows:

> "Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter a quarter section, or a less quantity of unappropriated public lands, to be located in a body, in conformity to the legal subdivisions of the public land; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory shall acquire any right under the homestead law, and every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land already so owned and occupied, exceed in the aggregate one hundred and sixty acres."

Section 2290, U. S. R. S.:

> "That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer, and file in the

proper land office, an affidavit that he or she is the head of a family, or is over twenty-one years of age; and that such application is honestly and in good faith made, for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation, necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation or syndicate in making such entry, nor in collusion with any persons, corporation or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter same for the purpose of speculation, but in good faith, to obtain a home for himself or herself, and that he or she has not, directly or indirectly, made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part to the benefit of any person except himself or herself, and upon filing such affidavit with the register or receiver, on payment of $5.00, when the entry is not more than eighty acres, and upon payment of $10.00 when the entry is for more than 80 acres, he or she shall thereupon be permitted to enter the amount of land specified."

Section 2301, U. S. R. S.:

"Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of Sec. 2289 from paying the minimum price for the quantity of land so en-

tered at any time after the expiration of fourteen calendar months, from the date of such entry, and obtaining a patent therefor, **UPON MAKING PROOF OF SETTLEMENT AND OF RESIDENCE AND CULTIVATION FOR SUCH PERIOD OF FOURTEEN MONTHS**; and the provision of this section shall apply to lands on the ceded portion of the Sioux Reservation, by act approved March 2, 1889, in South Dakato and in the State of Nebraska, but shall not relieve such settlers from any payments now required by law."

(Black-letters by present writer.)

What Bryers did is thus told by him when as a witness he took the stand and testified on behalf of the complainant (p. 61):

Q. When you made that entry, did you put any improvements on this land?

A. Yes, sir.

Q. What did they consist of?

A. A plank house, twelve by twelve, and I had a little crib on it, and about an acre and a half, I reckon, of course I didn't measure that, but that was about what it was.

(Page 64):

Q. Where were you living at the time you made this entry?

A. I was living at—I was working at Mike Smith's and I would stay on my homestead. I would go up there and stay on it some; I couldn't stay on it all the time.

Q. How long did you work at Mike Smith's?

A. A little over a year.

Q. Did you work there during the whole life

of your entry, from the time you entered until the time you commuted?

A. There and at Joe White's.

Q. How far did Mr. Smith live from your land?

A. About four miles.

Q. How far was Joe White from your land?

A. Five miles.

Q. How was this house of yours furnished at the time you made your entry?

A. Why, I just taken my things up there.

Q. What things did you take?

A. My quilts, to sleep on, and stayed on the land.

Q. What other furniture, if any, was in the house, except your quilts?

A. I never had any thing else.

Q. What cooking utensils did you have?

A. None. I carried my grub with me.

Q. How often during the twenty months that you say passed between the time of your entry and the time of your commutation proof did you stay all night on that land?

A. I reckon I made an average of staying on it about one night out of the month.

(Page 66):

Q. You say you built a house up there?

A. Yes, sir.

Q. How long did it take you?

A. Why, I was up there a week building on it.

Q. What was it made out of?

A. Lumber.

Q. Where did you get the lumber?

A. From Mr. Smith.

Q. The preacher?

A. Yes, sir.

Q. Did he help you build a house?

A. No; his son did.

Q. You cultivated the land out there, didn't you?

A. Yes, sir; I made two crops on the land.

Q. What of?

A. Corn and peas.

Q. Harvested them both?

A. Yes, sir.

Q. You used to go up there and sleep in that house?

A. Yes, sir.

Q. How often?

A. About once a month. I could not stay on it all the time, of course. I was a single fellow and a single fellow has got nobody to stay with him and he don't like to stay alone.

Q. You are working for the Reverend Mi.e?

A. Yes, sir.

Q. And when you got through work you came back and stayed on your place?

A. When I stayed on the homestead I did.

Q. You stayed there as much as any place else?

A. Well, no, because I worked and when I worked out I couldn't go back; it was too far; I stayed there all I could, though.

Q. You were not able to make a living by working on that homestead?

A. No, sir; the land was too poor.

Q. You went back there all that was necessary to attend to your crop?

A. Yes, sir.

Q. Kept at your work right straight along?

A. Yes, sir.

Q. Didn't you have any other home except that?

A. Well, no; I didn't have any other home, of course.

Q. You considered it your home?

A. Yes, sir.

Q. When you were working out you were living up there at your house?

A. Yes, sir; I didn't have any other home, only when I moved.

Q. You would live with the Reverend Mike for a while and then go back to your homestead?

A. Yes, sir.

Q. Then you would work for White a while and then come back home?

A. Yes, sir.

Q. When you would get through work at the Reverend Mike's you would come back to your homestead and live on it?

A. Yes, sir; while I was on my homestead I worked too.

(P. 69):

Q. You say you made this entry with the idea of having a home there for yourself?

A. Yes, sir; I did; I really did.

(P. 70):

Q. Yes, you do; if you enter a piece of land with the idea of making it a home and then turn around in twenty months and sell it, you must have changed your mind.

A. Well, I did change my mind.

Q. What led you to do so?

A. Well, I didn't think I could make a living on it.

Q. What was the nature of this land?

A. It was pine land.
Q. Pine timber land?
A. Pine timber land; it was poor—too poor land.

(P. 165):

Q. Where were you living at the time you made your entry?
A. Working on my place and working on Mr. Mike Smith's. I was working with him. I was living on the place, staying there.
Q. How long did you work for Mike Smith?
A. I don't exactly know how long.
Q. About how long?
Q. Pretty well all the time I had my homestead. I worked with him off and on and worked some on my place.

This, as it appears to us, constituted compliance with the law. Bryers had no other home while complying with his entry. He at no time allowed six months to elapse without staying and residing upon his entry. He made the entry "with the idea of having a home there" for himself. He considered it his home. He erected a house upon the premises, slept upon them from time to time, and worked upon them continuously, as is shown in the foregoing testimony. It is true that he worked as a day laborer at Mike Smith's during the period of his entry, but he did this because the land he entered was too poor to sustain even his wretched existence.

The homestead law, as we read it, contemplates that the entryman may go away from his land and work out for other people. Its only prohibition is against an

abandonment exceeding six months in duration at any one time. No such abandonment can be attributed to Bryers.

The Court should bear in mind that Bryers was not only a Government witness, but was a witness whom the Government had cowed and over-awed in a most outrageous manner, before placing him upon the stand. We mention this fact because it justifies us in saying that Bryers testified as much in the Government's favor as his slow wit and the facts permitted him to do. That he was cowed and over-awed by the Government the following evidence shows:

(P. 65):

Q. You have been indicted, haven't you?
A. Indicted?
Q. Yes, sir; you have been indicted for perjury?
A. Yes, sir.
Q. By the United States Government?
A. Yes, sir.
Q. The indictment is now pending, is it not?
A. Yes, sir.
Q. You have not been tried on it?
A. No, sir.

* * * * * * * * *

Q. Didn't you make an affidavit to Mr. Coleman?
A. Yes, sir.
Q. He told you it would be all right if you would make the affidavit?
A. Yes, sir.

Q. He told you you need not worry about that indictment for perjury if you made that affidavit?

A. He didn't say anything about it.

Q. He told you that it would be all right?

A. Yes, sir.

Q. And told you if you made that affidavit you need not be worried any more?

A. Yes, sir.

Q. That was the reason you made that affidavit?

A. Yes, sir.

Q. That is the reason you are here testifying now?

A. Yes, sir.

Even though this poor wretch was thus coerced into doing its bidding, complainant did not once ask him whether Nat Wasey knew anything about his compliance or non-compliance with the homestead law. It did not once ask him if Nat Wasey had ever been upon the land. Why? Because it did not dare to, apparently. Bryers was their witness, very much so—body and soul, almost. Bryers was in a position to know. Complainant placed him on the stand and did not ask him the question. Complainant did not place on the stand any other witness who knew, or pretended to know what knowledge Wasey had of the matter. There can be only one explanation of the failure of the complainant to interrogate Bryers on this subject, and that is complainant's fear that Bryers would testify in a manner adverse to complainant's interest.

Before going further into the notice of fraud charged to the Wright-Blodgett Company, Limited, it might not

be amiss to give a brief history of the advent of the Wright-Blodgett Company, Limited, into Louisiana, and of its method of doing business.

NO NOTICE OF FRAUD IN THE WRIGHT-BLODGETT COMPANY, LIMITED.

The testimony shows that the Wright Blodgett Co., Ltd., defendant, is domiciled in Saginaw, Michigan; that it went into Louisiana late in 1898, or early in 1899, for the purpose of buying timber lands. It shows that its total purchases of timber land in Louisiana aggregated approximately 150,000 acres, situated in a fairly compact tract. (Ben Foster, Rec., pp. 95-96.) It shows that when that company first went into Louisiana it secured from one of the best available firm of timber estimators, namely: the firm of J. D. Lacey & Company, a cruise or estimate of the timber in the territory into which it was entering, and wherein it proposed to make purchases. This fact and its importance are affirmatively testified to by Ben Foster, a witness **for the complainant,** who swears **as follows** (Rec., p. 94):

> Q. If I understood you correctly, you stated the company had caused to be made a general cruiser's estimate of timber in that section of the country?
>
> A. No; I didn't state that they caused a cruise to be made, but I believe they had such a cruise from J. D. Lacey & Company.
>
> Q. Who are J. D. Lacey & Company?
>
> A. Real estate man, with an office in New Orleans

Q. Do they or do they not make a business of making these timber cruises or estimates?

A. It is their principal business, or was, at that time.

Q. How do they stand in the business and how are their estimates considered by timber people?

A. Of the best.

Mr. Foster then swears that it is the custom of large timber firms to secure such an estimate and to proceed to buy land on the faith of and basis of such estimates, without any further investigation, and without any personal knowledge on their part of the land purchased, or its timber supply. (Foster, p. 94):

Q. (7) Is it not a fact that timber people very often buy on estimates made by reputable firms like J. D. Lacey & Company without making any special investigation themselves?

A. **That is the usual case, the usual method of doing business.**

The reason for this method of doing business is not far to seek. These timber purchasers are buying great tracts of land. Their purchases must be made as quietly and quickly as possible, before the fact that they are in the field buying attains any great notoriety in the neighborhood, for the moment their presence becomes generally known, the prices of land begin rising and soon are so high as to make purchases at profitable figures impossible.

The testimony further shows, without contradiction, that the timber estimators by whom these timber estimates are made, in going over land, pay little or no atten-

tion to the improvements, but confine their efforts to ascertaining the amount of timber that there is on the land. Complainant's witness, Foster, testified on this subject as follows (Rec., p. 103):

> Q. (8) When a timber estimator goes on land and estimates timber, does he pay any particular attention to improvements?
>
> A. Simply as to noting them on the map. Whenever I estimate and run on a house I make a note of the fact and how the house is located on the land; also make a note of the fact of how much has been cleared, in order to justify any statement that is made as to the timber.
>
> Q. (9) Do you make any statement as to the condition of the house?
>
> A. None whatever; I do not.
>
> Q. (10) Do you pay any particular attention to the condition of the house?
>
> A. Not to the house, simply as to how its land is cleared.
>
> Q. (11) You attend to your business and see how much timber there is on the forty?
>
> A. That is my business, regardless of improvements.
>
> Q. That is the custom observed among all timber estimators?
>
> A. Yes.

(Page 105):

> Q. (8) In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the laws so as to entitle them to a final receipt?
>
> A. I never did.

The foregoing is the testimony of a disinterested Government witness, placed upon the stand by the complainant. No attempt was made to contradict him by the complainant, for the reason that his testimony is in exact accordance with the facts.

The importance of these facts is this: They show that the making of a special or personal investigation of this land and its homestead would have been an unusual thing for the Wright-Blodgett Company to do. They show that if the Wright-Blodgett Company followed the usual custom of large buyers of timber lands, they bought this land without knowing any thing about it or its owner except what the Lacey estimate showed. They show that if the Wright-Blodgett Company, Limited, followed the usual custom they would have had no information as to compliance with the Homestead laws other than the presumption of compliance resulting from the issuance of the final receipt, a presumption which this Court has repeatedly said they were entitled to act upon. More than that, they show that the Wright-Blodgett Company, Limited, followed that custom, for Foster tells us that he never made such an investigation, and at record, page 87, it appears that he was for some years an employee of the Wright-Blodgett Company, Limited, although at the time he gave this testimony he was and for a long time had been employed by other persons.

The testimony further is that the Wright-Blodgett Company, Limited, defendants herein, made it a custom to buy no lands without first having an abstract of title made, submitting same to the law firm of Pujo & Moss, one of the best known law firms in the State of Louisiana,

(Mr. Pujo was chairman of the Congressional Money Trust Commission) and obtaining from that firm a written opinion as to the validity of the title. The testimony in regard to their custom in this respect was given by Messrs. Foster and Wingate, two witnesses placed upon the stand by the Government, and by C. D. Moss, of the firm of Pujo & Moss, a witness placed upon the stand by the defendant. Their testimony is as follows:

Wingate testified (Tr., p. 157):

> Q. You know that it was the custom of the Wright-Blodgett Company, Limited, as Mr. Moss, of Pujo & Moss, testified, to submit all their titles to them for examination before final purchase?
>
> A. Yes, sir; they were Mr. Kelly's instructions. He told me that at any time he should happen to be away, and if I had an abstract made and sent to Pujo & Moss, and if Pujo & Moss passed on the abstract, the draft would be paid. Pujo & Moss passed on all their abstracts.
>
> Q. They did not purchase any lands until Pujo & Moss approved the title?
>
> A. That was my understanding.

Foster testified that he went into the employ of the Wright-Blodgett Company, Limited, in the fall of 1901, and then continues as follows (Rec., p. 103):

> Q. At the time you first went into the office, however, the custom was to submit all titles, whether based on patents or final receipts, or otherwise, to Pujo & Moss, for approval?
>
> A. Yes, sir; all titles.

Q. Mr. Moss testified this morning that it was the opinion among many local members of the bar at that time that purchasers were justified in buying on a patent or final receipt, without further investigation. When you first went into office was any advice of that character given to you by that firm?

A. I don't remember of special advice, but that was my understanding, that either a final receipt or a patent was as good as a title could be.

C. D. Moss testified (Rec., p. 108):

Q. Was your firm employed by the Wright-Blodgett Company, Limited, in or about the years 1898 or 1899?

A. Yes, sir; my recollection is that the employment began about 1899.

Q. What was the nature of that employment?

A. Our firm was employed to pass particularly upon abstracts of title upon lands the company was acquiring in the Parishes of Calcasieu, Vernon and Rapides, and also to advise the representatives of the company at Lake Charles in reference to purchase of land.

Q. What was the custom adopted by your good selves and the Wright-Blodgett Company, Limited, relative to these examinations of title?

A. Well, the custom was for the abstract of title to be brought into our office for examination. We would pass upon the titles and give our opinion to the representatives at Lake Charles, and the lands would then be purchased. After the lands were purchased it was the rule for the abstracts of title to be brought back to the office, after the deeds were acquired from the different owners,

and these deeds were carried on the abstract, so that our opinions would show our opinion of the titles in the Wright-Blodgett Company; in some cases, I recall, there were two written opinions.

(Rec., p. 110):

Q. Was your office called upon to pass upon all deeds and purchases made by the Wright-Blodgett Company?

A. I think all but the first transaction. My recollection is that when the company first organized it purchased a very large tract of land from parties in Chicago, the Fairbanks people, and according to the best of my recollection that purchase was made before Pujo & Moss ever saw the abstract of title.

Q. In cases where the Wright-Blodgett Company would purchase direct from entrymen or Government land, would you be called upon to pass upon such title where there was no transfer nor intervening transaction?

A. That is my recollection, that the abstract would be brought in either before or after issuance of the patent; the abstract would always be brought in showing the issuance of the patent, or showing simply issuance of final receipt, and our opinion would be asked about it, and in somes cases, if not in all, written opinions would be given, and then after the deed was acquired in the name of the Wright-Blodgett Company, either the same abstract or a new one would be made up and brought in for our examination and opinion. Afterwards, Mr. Kelley explained to us that he wanted opinions from our firm on every purchase to show that the Wright-Blodgett Company was the rightful owner,

so that in the event of sale subsequently these written opinions could be used.

(Page 111):

Q. (24) In these cases of purchases after the final receipt, but before the patent, did the abstract submitted to you show any report as to whether the lands had been examined to ascertain whether or not the Homestead law had been complied with?

A. No; we would have the naked abstract showing just the issuance and final receipt.

(Page 113):

Q. (30) **Did you advise the Wright-Blodgett Company that before transferring any land that they had purchased upon a simple receiver's receipt it would be advisable for them to make an investigation before they sold the land to any one else?**

A. **No, sir; I do not recall that we ever gave any such advice to them, or ever thought it was necessary, because, up to the time of these rumored investigations, we did not know of a single case that had come up in our Courts in southwestern Louisiana where fraud was charged, and the lawyers thought a final receipt equivalent to title without making themselves any special investigation of it.**

(Page 93):

Q. (1) Mr. Moss, on your cross-examination, informally and in the course of explanation given to the Assistant District Attorney, you explained the attitude of the Calcasieu bar prior to the coming

of the Government inspectors into Calcasieu Parish, on the subject of titles passed on on final receipts from the Government. Will you now repeat that explanation, fixing the time at which the attitude of the bar was changed by the coming of the Government inspectors?

A. Yes, sir; I may say that for a number of years, as far back as I can remember, it was considered by the bar at Lake Charles that if an entryman had a final receipt, which showed that he had made his final payment, that it was absolutely safe to approve the title. There had been no suits in our Courts that I can recall where any charge of fraud were ever made relating to any entries, and the lawyers, while they might be mistaken, thought a final receipt to be equivalent to a patent.

Q. When was the attention of the local bar called to the possibility of trouble in connection with final receipts and in what manner was their attention called to it?

A. The first time that the matter was called to our attention was when the investigation was started by the Government, to which I have referred, and I cannot give you the exact year.

At page 114 Mr. Moss had fixed the year as 1902, 1903 or 1904.

Mr. Moss further testified, on page 117, that his firm had actually passed upon the title here in dispute, and the written opinion of the firm approving the title is in evidence. (Rec., p. 38.)

It thus appears that when the Wright-Blodgett Company, Limited, bought the land here in controversy they bought it on the faith of the general estimate made by

J. D. Lacey & Company, without making any special investigation of the land. It appears, further, that the attorneys for the Wright-Blodgett Company, Limited, one of the most reputable firms in the State of Louisiana, had in good faith correctly advised them that a final receipt was as good as a patent, and that they could safely purchase in all cases where there was a final receipt, without making any inspection, but relying entirely upon the fact that the final receipt had been issued. That this opinion of Messrs. Pujo & Moss was correct has been expressly held by this tribunal in the **Clark and Detroit Lumber Company cases,** where it was ruled that there is no duty imposed upon the purchaser to hunt for grounds of doubt.

What, then, was the Wright-Blodgett Company's situation? They knew from the opinion of Pujo & Moss that the title was good. They knew from the estimate made by J. D. Lacey & Company exactly what timber and what property they were buying. There was no occasion for further investigation, a fact which the foregoing quotation from Wingate's testimony emphasizes, he having stated that his instructions were to send abstracts to Pujo & Moss, and if they approved the titles, the draft would be paid without further todo. It further appears that even had a special investigation been made, that investigation would have been made with a view solely to substantiating the statements made in the estimate of J. D. Lacey & Company as to the amount of timber standing on the land. And it appears further that the only information secured from such an additional investigation by the Wright-Blodgett Company, Limited, would have been a timber estimator's report, which re-

port would have contained no information on the subject of compliance **vel non** by the homesteader with the Homestead law. On this subject **Foster,** page 105, Question 8, testified as follows:

> Q. In going upon these lands, would you make any investigation for the purpose of ascertaining whether the entryman had complied with the law so as to entitle him to a final receipt?
> A. I never did.

The foregoing is particularly important in this case, for the reason that the evidence adduced by the Government itself conclusively shows that all of the outward signs of compliance with the Homestead laws were taken by Mr. Bryers, the entryman. Thus, the Government's own witnesses show that Bryers went upon the land and built upon same a good house; around this house he cultivated about an acre and a half of land and built a corn crib. His testimony is that he kept at work straight along on this land and tended his crop. (P. 67.)

His testimony has been quoted supra, p. 23, et seq.

With all of these improvements made and kept up on the land, it is quite evident that the ordinary timber cruiser passing over the land and observing a house, a growing crop, a corn crib, etc., would have nothing to put him on notice that the homesteader had not fully complied with the law; and this is particularly true when we bear in mind the fact that timber cruisers pay no particular attention to improvements. To this situation the following language used by this Court in the Clark case is peculiarly appropriate:

200 U. S., 601, U. S. v. Clark:

> "It is argued, further, that Clark's inspector must have gone upon the land about the time of the entries, in order to do the necessary work of estimating the timber. If, for the purpose of argument, we assume that knowledge of the timber inspector of facts affecting the titles with which he had nothing to do was chargeable to Clark, still the knowledge is a mere guess; there is nothing present or required to be present on the face of the earth to indicate when the entry took place. We cannot infer fraud merely from more or less familiar relations between some of Clark's agents and Cobba."

BRYERS' ENTRY AND FINAL PROOF WAS IN STRICT ACCORDANCE WITH THE FORMS PRESCRIBED BY LAW AND DECEIVED THE TRAINED GOVERNMENT EXPERTS.

Not only was all of the foregoing true, but the evidence shows that Bryers made his final proof in due form, swearing and having his witnesses swear that he had established his actual residence on the land, had cultivated two acres and had put improvements thereon. The proof was so satisfactory on its face that the Government, after issuing the final receipt to Bryers, on Sept. 18, 1901, proceeded (after presumably making further investigation, in order to ascertain that the entry was correct in all

respects), to issue a patent some nine months later, to-wit: on April 1st, 1902. This patent is the patent now assailed. **This patent was issued long after the sale to the Wright-Blodgett Company, Limited, was made and recorded.** (Rec., p. 25.) That is to say, the Government issued the patent after being informed by the record of the sale to the Wright-Blodgett Company, Limited.

The proof was apparently so full and correct that as the bill says (Rec., p. 7):

> "The said officers and agents of your orator, the United States, supposing and believing the said testimony and statements contained in said depositions of the said defendant and his said witnesses to be true, and relying upon the truth of said testimony and statements so falsely and fraudulently given and made by the said defendant and his said witness, as aforesaid, and believing and supposing, upon the strength of said depositions and testimony that the said defendant had actually resided, made settlement, and established his residence upon said tracts of land, and had cultivated the same in the manner and to the extent and during the period of time as therein stated, were wholly deceived and misled into allowing said proof to be filed and accepted, and into permitting the issuance of said final receipt and said certificate of purchase of said land, and the issuance of the United States patent therefor, by the said officers of the United States, as hereinabove set forth, and the delivering of the said patent to the defendants."

Our natural inquiry is: If the proof was so full as to deceive the skilled experts of the United States Land

Office, whose **DUTY** it is to investigate and **to hunt for grounds of doubt**, why should the Court infer that it did not equally deceive the Wright-Blodgett Company, Limited, upon whom no such duty was imposed? This record gives no satisfactory answer to this inquiry. On the contrary, it appears that there was nothing in the way in which the Wright-Blodgett Company, Limited, went about making its purchase, and nothing in the way in which Samuel E. Bryers, the entryman, went about making and commuting his entry, which could or should, under normal circumstances, have placed the Wright-Blodgett Company Limited, upon notice of any alleged fraud in the entryman, Samuel E. Bryers.

But we are told by the bill that the Wright-Blodgett Co., Ltd., had this knowledge through J. M. Boyd and Nat Wasey. Let us get the dates in mind and then examine into the correctness of this assertion. The Wright-Blodgett Company, Limited, acquired this land (Rec., p. 25) on Sept. 28, 1901. The record affirmatively shows that at that time J. M. Boyd was not, and had never been in the employ of the defendant. We base this statement upon the testimony of the Government's witness, Foster. He swears, at page 86, that he was employed by the Wright-Blodgett Company, Limited, in the fall of 1901. On page 91 he swore that for several years prior to that time he had an office in Lake Charles, Louisiana, in the immediate neighborhood of the office of the Wright-Blodgett Company, Limited, and that he knew the persons in charge of the latter's office. On page 95 he swore:

Q. Was J. M. Boyd in the employ of the Wright-Blodgett Company during the years 1901 and 1902, or prior to those years?

A. He was never in the employ of the company, while I was with them, and I don't believe before I was with them.

J. M. Boyd may, therefore, be eliminated from the discussion. He was not an agent of the Wright-Blodgett Company, Limited, but was an agent of the United States an United States Commissioner. No knowledge of any alleged frauds in the entryman can be held to have been acquired by the Wright-Blodgett Company, Limited, through him.

As to Nat Wasey and his connection with the transaction, the record shows that at the time of the trial of this case he was dead. (R., p. 83.) There is not one single line of testimony anywhere in this record going to show that Wasey was ever on the land here in controversy, or had any knowledge of said land, beyond the information given in the estimate of J. D. Lacey & Company. On the contrary, as noted above, the Government placed the entryman on the stand and pointedly failed to ask him any question regarding Wasey. This failure raises a strong presumption that its own witness was against the Government on its claim that Wasey had any knowledge of the homesteader's compliance or non-compliance with the law. In view of that presumption and of the fact that there is, as noted above, absolutely no showing that Wasey was at any time upon the land, we submit that the complainant has failed entirely to make out the allegations of the bill and that the bill should be dismissed.

This Court has left no doubt on the subject of the proof required to be produced by the Government in a suit brought by it to annul a land patent issued under the great seal of the United States. Its language has been emphatic and its decisions have been uniform. Some of the language used is as follows:

121 U. S. 381, Maxwell Land Grant Case:

> "We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct the written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it cannot be done upon a bare preponderance of evidence, which leaves the issue in doubt. If the proposition as thus laid down in the case cited is sound in regard to the ordinary practice of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in his country and so many rights are held purporting to emanate from the authoritative action of the

officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistence to the whims and caprices of every person who chooses to attack them in a court of justice, but it should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

123 U. S., 307, Colorado Coal & Iron Co. v. United States:

The syllabus reads:

"In this case the United States sought to cancel a number of patents to pre-emptors, the land having passed into the hands of an innocent purchaser, on the ground that there were no actual settlements and improvements, but that the alleged pre-emptors were fictitious persons, who did not exist, and that these facts were known to the register and receiver, through whose fraudulent act in this respect the patents were obtained. Having established that there were no such settlements and improvements, the plaintiff introduced the evidence of many witnesses residing in the vicinity that the persons named in the patents had not resided there and were unknown to the witnesses, but did not call the register and receiver or the solicitor, through whom some of the patents were obtained, from the Land Office, or the officers who had witnessed and taken acknowledgment of deeds purporting to convey the interest of the patentees to the defendant. Held, that the burden was on the Government to produce so much of this further

evidence as could be obtained, and that, in its absence, the United States had not made all the proof of which the nature of the case was susceptible and which was apparently within their reach."

This language is peculiarly applicable here, because of the fact that J. M. Boyd is shown to have been a United States Commissioner at the time that the proof was taken, and no reason is given why he was not placed upon the stand by the Government. It is true that the Government charged in the bill that J. M. Boyd was an agent of the Wright-Blodgett Company, Limited, but their own witness, Foster, had affirmatively proven during the trial of the case that J. M. Boyd was not an agent of the Wright-Blodgett Company, Limited.

133 U. S., 193, U. S. v. Hancock:

The syllabus reads:

"Proof that a surveyor of public land, who in the course of his official duties, surveyed a tract which has been confirmed under a mistaken land grant, accepted from the grantee some years after the survey, a deed of a portion of the tract which he subsequently sold for $1500.00, though it may be the subject of criticism, is not the **CLEAR, CONVINCING AND UNAMBIGUOUS PROOF** of fraud which is required to set aside a patent of public land."

197 U. S., 200, United States v. Stinson:

The syllabus reads:

"The Government, like an individual, may maintain any appropriate action to set aside its grants

and recover property of which it has been defrauded; and while laches or limitations do not of themselves constitute a distinct defense as against the Government, yet the respect due to a patent, the presumption that all preceding steps were observed before its issue, and the necessity of the stability of titles depending on official instruments demand that suits to set aside or annul them should be sustained only when the allegations are clearly stated and fully sustained by proof.

"In such a suit the Government is subjected to the same rules as an individual, respecting the burden of proof, quantity and character of evidence, presumption of law and fact, and it is a good defense that the title has passed to a **bona fide** purchaser for value without notice. Generally speaking, equity will not simply consider whether the title was fraudulently obtained from the Government, but will also protect the rights of innocent parties."

A reading of this record will, we submit, convince this Court that there is no such clear, unequivocal and unambiguous evidence here as would sustain a finding of notice of fraud in the Wright Blodgett Company, Limited.

AN ATTEMPTED VARIANCE.

The representatives of the Government in the lower Court realized that they had not made out a case entitling them to relief, and so, at the eleventh

hour, they put that poor wretch, Bryers, on the stand, to show something that they had not averred in their bill; that is, that the Wright-Blodgett Company had contracted to purchase the land before Bryers made his final proof. To this eleventh hour defense we strenously objected, as no allegation of the kind had been made in the bill, and under the pleadings the evidence was absolutely irrelevant. See objection and authorities quoted supra, this brief, page 6, and R., p. 21, No. 2, together with authorities quoted above. This objection we now insist upon, and it would seem to dispose of the attempt to annul the patent on this ground. However, for greater certainty, we will discuss Bryers and his evidence. We say Bryers and his evidence because Bryers alone gave testimony in regard to the matter and Bryers alone, Wasey being dead, was able to give testimony.

If your Honors will turn now to the report of the testimony, which was given by Bryers at Lake Charles in January, 1908, (Tr., p. 63) you will find that he then and there swore as follows, referring to certain money which he stated he had gotten from Wasey for the purpose of making his commutation proof.

> Q. Were any promises made by you to Mr. Wasey in consideration for this money?
>
> A. I don't believe there were any.

(Tr., p. 64):

> Q. When did you sell it to Wasey—how long after your commutation?
>
> A. Why, I never sold it until I got my final receipt.

He likewise swore that the United States Government had indicted him for perjury, and further stated that they had asked him to testify here and told him that if he made an affidavit in connection with this suit to annul the patent to the land he (Tr., p. 65) "Need not be worried any more about the indictment." This being the situation, he took the stand in Shreveport, La., about a year or a year and a half later, and was, indeed, a pitiable spectacle. First he swore that he had promised to sell the land before he got his receipt; then, on page 162, answer 5, he swore that he had sold **after he got his receipt,** his testimony being as follows:

> Q. You don't remember that you made an agreement to sell to Wasey before you got your final receipt, or after you got it?
>
> A. Yes, I sold it to him after I got my final receipt.
>
> Q. You didn't sell it then until after you got your final receipt?
>
> A. Yes. I didn't sell it till after I got my final receipt.
>
> Q. And you never made any binding agreement with him to sell it to him until after you got your final receipt, did you?
>
> A. Well, I don't want to mix myself up.
>
> Q. Well, if you remember, say so, and if you don't remember, say so.
>
> (Objected to by the Government.)
>
> Q. Go ahead and answer, Mr. Bryers; state if you had such an agreement with Wasey before you got your final receipt.
>
> A. I have forgot, sure.

Later on he said that he had promised to sell before he got his final receipt, his whole testimony being given with much halting and squirming and changing of color and hesitating to reply; and finally, on the last cross-examination, he turned to Mr. Mills, the Assisstant United States Attorney, with a most appealing and piteous glance—the look of a dumb animal in mortal terror, and said to him:

> "I didn't cross yours, did I?"
> (Tr., p. 106, Ques. 1.)

And yet, on this testimony, the testimony of a dull, childish person, in mortal terror, who contradicted himself a dozen times in the course of a half hour's testimony, and who showed himself uncertain, weak, and pitiable in the extreme, this Court is asked to set aside a United States patent and to take away a tract of land from the defendants, for which they have paid a considerable sum of money, and upon which they have been paying taxes for a number of years. We submit that this cannot and should not be done.

It is to be borne in mind that Nat Wasey was dead and that there was no possible way to refute any statement which Bryers might make. If a patent is to be upset on his testimony, we submit that no patent will ever be safe, because after the death of the man by whom the property is actually purchased by the buyer, the entryman can, at any time, come into Court and swear that the contract of sale was made prior to the receipt by him of his final receipt. If the witness upon whom the Government relies as its sole support in an attempt to upset

a land title, contradicts himself so many times that he becomes a pitiable spectacle, surely the testimony of that witness is not the clear, unequivocal evidence which commands respect and that amount of it which produces conviction. And this being so, the evidence adduced is not sufficient evidence under the authorities to justify the upsetting of a land patent.

Besides all this, we desire to call the Court's attention to the fact that the entry here in question was commuted under Section 2301 of the United States Revised Statutes, and to the further fact that the section in question contains no provision prohibiting the entryman from disposing of his land prior to the receipt by him of his final receipt.

It is true that United States Revised Statute 2290, provides that when the homestead entryman makes his original entry he must swear

> "that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government should enure in whole or in part to the benefit of any person except himself or herself.'

But this provision, while slightly different in phraseology, is in effect no more comprehensive that is the provision contained in the Timber and Stone Act. The latter act provides that the

> "Applicant shall declare that the entry is not made for purposes of speculation, but in good

faith, and that he intends to appropriate the land to his own exclusive use and benefit and that no agreement has been made, directly or indirectly, with any person or persons whomsoever, by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant."

(The foregoing statement of what the act provides is quoted from the language of Chief Justice White in the **Williamson case, 207 U. S.)**

In one case the statute provides that the entryman must swear that he does not apply to enter the land for the purpose of speculation, but in good faith, to obtain a home for himself, and that he has not directly or indirectly, made, and will not make, any agreement or contract in any way or manner by which the title which he or she might acquire from the Government should enure in whole or in part to the benefit of any person except himself; and, in the other case, the statute provides that the applicant shall declare that the entry is not made for purposes of speculation, but in good faith, and that he intends to appropriate the land **to his own exclusive use and benefit,** and that no agreement has been made, directly or indirectly, with any person or persons whomsoever, by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant.

There would seem to be the narrowest possible difference of meaning between the two statutes, and yet this Court has held, in the Williamson case, that the latter suit did not preclude the entryman from agreeing to

sell his land before he received his final receipt. The reasoning of Chief Justice White, upon which the Williamson decision is founded, is lucid and cogent. We can add nothing to it, hence reproduce it as our strongest brief.

Williamson v. United States, 207 U. S., 455:

> "To do so it becomes necessary to determine whether the Statute requires an applicant after he has made his preliminary sworn statement concerning the **bona fides** of his application, and the absence of any contract or agreement in respect to the title, to additionally swear to such facts after notice of his application has been published, and the time has arrived for final action on the application. And this, of course, involves deciding whether the regulation of the commissioner exacting such additional statement at the time of final hearing is valid. The inquiry concerns only the second and third sections of the act. Turning to the second section, it will be seen that it requires the applicant to make a sworn statement giving many particulars concerning the land, its usefulness for cultivation, its being uninhabited, the absence of mineral, etc., followed by the requirement that **THE APPLICANT SHALL DECLARE THAT THE ENTRY IS NOT MADE FOR PURPOSES OF SPECULATION, BUT IN GOOD FAITH, AND THAT HE INTENDS TO APPROPRIATE THE LAND TO HIS OWN EXCLUSIVE USE AND BENEFIT, AND THAT NO AGREEMENT HAS BEEN MADE, DIRECTLY OR INDIRECTLY,** with any person or persons whatsoever by which the title to be acquired from the Government shall enure in whole or in part to any person except the applicant. And the

section concludes by causing any false statement made in the application to constitute the crime of perjury.

"Examining the third section it will be seen that it provides that upon filing said statement as provided in the second section, it shall be the duty of the local land officer to post a notice of the application in his office, for sixty days, furnish the applicant with a copy of such notice for publication at the expense of the applicant, in the nearest newspaper, for sixty days, and when such period has expired, on proof of the publication and of certain facts which the statute expressly enumerates, the applicant shall, upon payment of the requisite charge, in the absence of a contest, be entitled to a patent for the land. Examining the items which the statute requires the applicant to make proof of after showing publication, it is apparent that while some of the things referred to in the prior section, and which are required to be stated in the preliminary proof are reiterated, **ALL EQUIREMENT IS OMITTED OF ANY STATEMENT REGARDING A SPECULATIVE PURPOSE ON THE PART OF THE APPLICANT, HIS BONA FIDES AND HIS INTENTION TO ACQUIRE FOR HIMSELF ALONE**. When the context of the Statute is thus brought to view, we are of the opinion that it cannot possibly be held without making by judicial legislation a new law, that the statute exacts from the applicant a reiteration at the final hearing of the declaration concerning his purpose in acquiring title to the land, since to do so would be to construe the statute as including in the final hearing that which the very terms of

the statute manifest were intended to be excluded therefrom. We say this because, as a third section re-enacts in the final application a reiteration of some of the requirements concerning the character of the land, made necessary in the first application, and omits the requirements as to the **bona fides**, etc., of the applicant, it follows under the elementary rule that the inclusion of one is the exclusion of the other; that the re-enacting of a portion only of the requirement was equivalent to an express declaration by Congress that the remaining requirement should not be exacted at the final proof.

* * * * * * * * *

"**Indeed, we cannot perceive how, under the statute, if an applicant has in good faith complied with the requirements of the second section of the act, and pending the publication of notice has contracted to convey, after patent his rights in the land, his doing so could operate to forfeit his right.** These conclusions are directly sustained by a recent ruling in **Adams v. Church, 193 U. S., 510,** construing the Timber Culture Act. Under that law an applicant for entry was obliged, among other things, in making his application, to swear to his good faith and to the absence of speculative purpose, in the exact words of the statute now under consideration. But in the Timber Culture Act, as in the Timber and Stone Act, the requirement was not reimposed in respect to final proof. In the cited case the entryman who had complied with the statute in making his application had between the date of the application and the making of final proof, disposed of his right, and the question was whether by so doing he had forfeited his

claim. In deciding adversely to the contention that he had, the Court said, on page 515:

"'**BUT THE LAW DOES NOT REQIRE AFFIDAVIT BEFORE FINAL CERTIFICATE THAT NO INTEREST IN THE LAND HAS BEEN SOLD,** we perceive no reason why such contract as was found to exist by the Supreme Court of Oregon would viatiate the agreement to convey after the certificate is granted and the patent issued. If the entryman has complied with the statute, and made the entry in good faith, in accordance with the terms of the law and the oath required of him upon making such entry, and has done nothing inconsistent with the terms of the law, we find nothing in the fact that during his term of occupancy he has agreed to convey an interest to be conveyed after patent issued, which will defeat his claim and forfeit the right acquired by planting trees and complying with the terms of the law. Had Congress intended such results to follow from the alienation of an interest after entry in good faith, it would have so declared in the law.'"

37 Fed., 666, United States v. Howard:

"Perjury cannot be predicated on an oath to immaterial and irrelevant statements, no matter how false such statements may be. Thus, where a homestead entryman on his application for commutation of his homestead under this section makes the affidavit required of an original applicant for homestead entry, but not required of an applicant for the commutation of such entry, the oath as to immaterial and irrelevant matter and cannot support a conviction for perjury."

In the course of the opinion the Court said:

> "If the homestead settler does not wish to remain five years on the land, the law permits him to pay for it with cash, and to obtain a patent therefor from the Government. In other words, he may abandon his rights under the homestead law and avail himself of the benefits of the law granting preemption rights. See **Secs. 2301** and **2259 R. S.** When this is done it is called a commuted homestead entry."

72 Fed., 601. The Court said:

> 'There is a wide distinction between the cancellation by the Land Department of a homestead entry and a refusal by the same authority of an application by the settler for patent before the expiration of the homestead limit of five years."

211 U. S., 507, United States v. Biggs:

> "The timber and Stone Act, as amended, while prohibiting the entryman from entering ostensibly for himself, but in reality for another, does not prohibit him from selling his claim to another after application and before final action. **Williamson v. United States, 207 U. S., 425.**"
>
> (The Court discusses the **Williamson case**, and affirms it in full.)
>
> See, also **United States v. Sullenberger, 211 U. S., 523; United States v. Freeman, 211 U. S., 525; Adams v. Church, 193 U. S., 510,** to the same effect.

We are aware that the Government will contend that the Williamson and Adams cases were virtually overruled

in the **Bailey-Sanders case, 228 U. S., 603,** but we cannot agree with that contention. In the Bailey case **no patent ever issued.** There the entry was disallowed by the Land Department before a patent issued and the Court was asked to upset the actions of the Land Department. It declined to do so. Here the Land Department acted favorably on the entry and issued patent. We believe the Court will again decline to upset its findings. Besides this, even if the case were incapable of differentiation, we believe that the doctrine enunciated by Chief Justice White in the Williamson case and affirmed in the Biggs case is the correct interpretation of the Statute, and should prevail.

It must not be forgotten that a patent is the highest form of evidence as against the Government, and that this Court has repeatedly held that it will not annul a patent unless the evidence is absolutely conclusive and makes the annulment thereof imperative. We submit that no such case is here presented. It it not only not shown that the Wright-Blodgett Company was in bad faith in purchasing this land, but the Wright-Blodgett Company has succeeded in showing that it was in good faith in doing so. The testimony is that they had a large timber estimate of the entire tract, and that it was the custom of timber purchasers to buy on the faith of such estimates. There is no testimony to show that any special investigation of this particular tract was made, and there is affirmative testimony to show that before making the purchase the titles to the land were tendered by the Wright-Blodgett Company to Messrs. Pujo & Moss, one of the best known law firms in

the State of Louisiana, and that that firm advised them that in all cases where final receipt had issued, they were perfectly safe in accepting the title without further investigation.

Under the circumstances, we submit that the good faith of the Wright-Blodgett Company is beyond question, and that against it the suit to annul the patent must be dismissed. We ask for judgment accordingly.

J. BLANC MONROE,

MONTE M. LEMANN,

A. R. MITCHELL,

Solicitors for Defendants.

December, 1914.